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OFFERS BY MEMBER STATES OF STUDY AND TRAINING FACILITIES FOR INHABITANTS OF NON-SELF-GOVERNING TERRITORIES

Report of the Secretary-General

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I. INTRODUCTION

1. By General Assembly resolution 845 (IX) of 22 November 1954, Member States were invited to extend to the inhabitants of Non-Self-Governing Territories offers of facilities not only for study and training of university standard, but also for study at the post-primary level, as well as technical and vocational training of immediate practical value.

2. In accordance with General Assembly resolution 1696 (XVI) of 19 December 1961, offers extended under resolution 845 (IX) are communicated by the Secretariat to the administering Powers to enable them to give appropriate publicity to the offers in the Territories under their administration.

3. Information on scholarships offered by Member States under the programme is made available to prospective applicants. Reference to the programme is included in the twenty-eighth edition of the handbook entitled Study Abroad (1994/1995), published by the United Nations Educational, Scientific and Cultural Organization (UNESCO).

4. Under the terms of General Assembly resolution 845 (IX) and subsequent resolutions, 1/ the Secretary-General submits to the Assembly each year a report containing detailed information on the offers made and the extent to which they were utilized. 2/ The present report, which covers the period from 1 October 1994 to 30 September 1995 is submitted in accordance with paragraph 5 of resolution 49/42 of 9 December 1994.

II. SCHOLARSHIP OFFERS AND AWARDS

A. Offering States

5. Over the years, the 46 States Members of the United Nations and one non-member State listed below have offered to make scholarships available for the use of inhabitants of Non-Self-Governing Territories in response to the resolutions mentioned above:

Australia
Austria
Barbados
Brazil
Bulgaria
Canada
Cuba
Cyprus
Czechoslovakia
Egypt
Finland
Gabon
Germany
Ghana
Greece
Hungary
India
Iran (Islamic Republic of)
Ireland
Israel
Italy
Jamaica
Libyan Arab Jamahiriya
Malawi
Malta
Mexico
New Zealand
Pakistan
Panama
Philippines

Poland	Turkey
Romania	Uganda
Russian Federation	Ukraine
Singapore	United Arab Emirates
Sri Lanka	United Kingdom of Great Britain and Northern Ireland
Sudan	
Switzerland	United States of America
Syrian Arab Republic	Uruguay
Tunisia	Yugoslavia

6. In addition to the programme under General Assembly resolution 845 (IX), a number of Member States have contributed to the United Nations Educational and Training Programme for Southern Africa (UNETPSA), information on which will be contained in the relevant report to the Assembly at its fiftieth session.

B. Offers and awards

New Zealand

7. In a note verbale dated 15 September 1995, the Permanent Representative of New Zealand to the United Nations informed the Secretary-General that in 1995 20 students from New Caledonia and 33 students from Tokelau were studying in New Zealand on New Zealand Government scholarships.

United Kingdom of Great Britain and Northern Ireland

8. In a note verbale dated 20 September 1995, the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations informed the Secretary-General that during the financial year 1994/95 the United Kingdom had offered 55 scholarships to students from the British Non-Self-Governing Territories as follows: Anguilla (7); Bermuda (5); British Virgin Islands (6); Cayman Islands (3); Falkland Islands (Malvinas) (1); Gibraltar (2); Montserrat (8); Saint Helena (including Tristan da Cunha) (21); and Turks and Caicos Islands (2).

Austria

9. In a note verbale dated 28 September 1995, the Permanent Mission of Austria to the United Nations informed the Secretary-General that the Austrian Development Cooperation regularly provided vocational training and capacity-building in the infrastructure and education sectors for inhabitants of Western Sahara. Furthermore, specific assistance was being provided on a regular basis for the training of kindergarten teachers from that Territory.

III. APPLICATIONS MADE THROUGH THE UNITED NATIONS

10. In accordance with the procedure established by General Assembly resolution 1696 (XVI), applications for scholarships received by the United Nations Secretariat from inhabitants of Non-Self-Governing Territories are transmitted

simultaneously to the offering States for consideration and to the administering Powers for information.

11. Between 1 September 1994 and 15 September 1995, the Secretariat received requests from 25 students for information on the availability of scholarships. None of those students were inhabitants of Non-Self-Governing Territories. Requests for information and applications received from South African students were forwarded for consideration to UNETPSA, as well as to the offering Governments.

Notes

1/ The most recent resolutions adopted by the General Assembly on this question are resolutions 47/17 of 16 November 1992, 48/48 of 10 December 1993 and 49/42 of 9 December 1994.

2/ For the most recent reports, see A/47/486, A/48/443 and A/49/413.

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THE SITUATION IN CENTRAL AMERICA: PROCEDURES FOR THE ESTABLISHMENT OF A FIRM AND LASTING PEACE AND PROGRESS IN FASHIONING A REGION OF PEACE, FREEDOM, DEMOCRACY AND DEVELOPMENT

Note by the Secretary-General

1. This document contains the third report of the Director of the United Nations Mission for the Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala (MINUGUA). The present document, like the two previous reports of the Director (A/49/856 and Corr.1 and A/49/929), gives a detailed account of the work carried out to date and of problems and progress noted by the Mission in fulfilling its mandate in the field.

2. This report covers the period from 21 May to 21 August and, whereas the format is the same as in the two former reports as far as content is concerned, it sets out in greater detail the initial steps taken to implement projects relating to the institution-building. As usual, I shall send a copy of this report to the United Nations High Commissioner for Human Rights with the request that it be transmitted to the United Nations Commission on Human Rights.

3. I should like to thank the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (URNG) for their continued support and cooperation, without which this work could not have been accomplished. Similarly, I should like to express my deep gratitude to the Group of Friends of the Guatemalan Peace Process (Colombia, Mexico, Norway, Spain, the United States of America and Venezuela) for the constant and invaluable support they have given to the Mission; to the Governments of Argentina, Brazil, Canada, Colombia, Italy, Spain and Sweden for having offered the services of their military officers.

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Annex

Third report of the Director of the United Nations Mission for the Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala

I. INTRODUCTION

1. Since its establishment by General Assembly resolution 48/267 of 19 September 1994, the United Nations Mission for the Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala (MINUGUA) has carried out its mandate of monitoring compliance by the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (URNG) with the Comprehensive Agreement on Human Rights, which both parties signed on 29 March 1994 (A/48/928-S/1994/448, annex I).

2. This report covers the period from 21 May to 21 August 1995. The Mission has continued to receive complaints of alleged violations of rights and, in accordance with its mandate, has pursued its work of institution-building. During the period under review, in addition to Norway's pledged contribution of US$ 1 million, the Trust Fund received support from the United States of America (US$ 500,000), from Denmark (US$ 200,000) and from Sweden (SKr 10 million).

3. The parties have continued to hold bilateral meetings as provided for in the Comprehensive Agreement. The Director has continued his periodic meetings with the President of the Republic and, in Mexico, with the URNG General Command. Similarly, a close relationship has been maintained between the Mission and its official counterpart in the Government, the Presidential Human Rights Committee (COPREDEH), and regular meetings have been held with ministries and State bodies involved in the protection of human rights.

4. In the Agreement on Identity and Rights of Indigenous People, signed on 31 March 1995 (A/49/882-S/1995/256, annex), the Government of Guatemala and URNG agreed to request MINUGUA to monitor compliance with those aspects which relate to human rights and which were recognized as requiring immediate implementation. Accordingly, the Director, at the request of the Secretary-General, assessed whether additional resources would be required for that purpose.

5. Shortly after the issuance of the second report of the Director of MINUGUA, which was transmitted to the General Assembly by the Secretary-General in his note of 29 June 1995 (A/49/929), the Secretary-General submitted a further report (A/49/955) to which was annexed the Director's assessment recommending a six-month extension of the Mission's mandate, to 18 March 1996, and requesting additional resources to ensure effective implementation of this additional mandate.

II. CONTEXT IN WHICH THE MISSION IS OPERATING

6. During the period under review, the Mission operated against the background of a number of factors: an intensification of political activity, owing to the forthcoming elections scheduled for November; the decision by URNG to declare a cease-fire for the two-week period leading up to the elections; the persistent climate of violence and public insecurity; the announcement by the President of the Republic that military Commissioners would soon be demobilized; the culmination of the exhumations from clandestine cemeteries; the controversy over the practice of telephone-tapping; the ongoing peace negotiations between the Government and URNG and the undertaking made in Contadora, Panama, by different political parties to respect whatever agreements may be reached.

7. The second report of the Mission was welcomed by the media and the various sectors of Guatemalan society, which described it as objective, fair and impartial.

8. The country's political agenda is dominated by the electoral process now under way, which will culminate on 12 November with elections to choose the President and Vice-President of the Republic, deputies to the Congress and the Central American Parliament and members of municipal bodies. If no presidential candidate obtains an absolute majority, there will be a second round on 7 January 1996 between the two candidates with the highest number of votes.

9. Compared with previous elections, the registration of parties and candidates reveals the participation of sectors which, in the country's recent history, have remained outside of the electoral process. For example, there has been the formation of the Frente Democrático Nueva Guatemala (FDNG) and numerous civilian election boards, a legal mechanism for participation at the municipal level. The URNG has urged the public to vote and has announced a cease-fire from 1 to 13 November. President Ramiro de León Carpio has also attempted to encourage a high turn-out at the polls by meeting with representatives of the political parties. Nevertheless, the electoral process will inevitably be influenced by the adverse effects of the armed conflict.

10. As regards the registration of candidates, the deadline for which expires on 13 September, there is still a controversy over the candidacy of Carlos López Girón, who has been accused of the murder of Jorge Carpio (para. 64) and Juan José Rodil Peralta, former President of the Supreme Court of Justice, wanted by the authorities for various offences.

11. The society has continued to suffer from the climate of generalized violence and public uncertainty, as demonstrated by the high rate of abductions and violent deaths and by the proliferation and use of fir arms. Violence has even claimed the lives of women and children, including the son of a Mexican diplomat. There continues to be a steady rise in the number of private security companies and self-defence groups, such as neighbourhood watch groups, which now number over 1,200 at the national level, according to various sources.

12. On 30 June, the President of the Republic announced his decision to demobilize approximately 25,000 military Commissioners with effect from 15 September. The Mission emphasized the importance of implementing this

measure. Military Commissioners have been repeatedly identified in previous Mission reports as well as by human rights activists, including the independent United Nations expert, Monica Pinto, for their involvement in acts of violence, harassment and intimidation against the civilian population.

13. The Congress of the Republic adopted two important laws designed to improve the human rights situation: Decree Law No. 17/73, which classifies torture as an offence under the Penal Code, and Decree Law No. 60/95, concerning the reduction of risk to the inhabitants of areas affected by the armed confrontation, by means of the removal and deactivation of mines and other explosive devices.

14. Public attention has also been focused on the exhumations carried out in clandestine cemeteries in Las Dos Erres, Petén, and Cuarto Pueblo, Quiché, as a result of efforts to cast light on the massacre of hundreds of inhabitants of these localities in 1982. In this connection, the Minister of Defence stated publicly that there might be over 40,000 corpses buried in clandestine cemeteries in Guatemala.

15. The scandal in Congress over the recording of telephone conversations of government officials resulted in a public debate over telephone-tapping, which is a violation of the constitutionally protected right to secrecy of telephone conversations. The Vice-President of the Republic declared to the press that such acts were not offences and the Minister of Defence affirmed that the army was authorized to listen in to telephone conversations whenever it considered it necessary.

16. On 21 June, the donor countries and organizations that provide assistance to Guatemala met in Paris under the auspices of the World Bank. The participants expressed support for the work of MINUGUA, making their assistance contingent upon progress in the negotiating process and implementation of the Mission's recommendations.

17. Finally, the negotiating process was supported publicly by the main political parties; on 22 August, at a conference organized by the Central American Parliament, these parties endorsed the undertaking to support whatever agreements might be reached as being of vital importance to the signatory Government.

III. VERIFICATION OF RESPECT FOR HUMAN RIGHTS AND OF FULFILMENT OF OTHER COMMITMENTS MADE IN THE COMPREHENSIVE AGREEMENT

18. The Mission has the task of verifying, in particular, respect for those human rights identified by the parties as priority rights and of monitoring fulfilment of the commitments made in the Comprehensive Agreement. This aspect of the Mission, which refers to phenomena that are particularly important in the Guatemalan context, makes it possible to have a deeper insight into the root causes of the human rights violations in that country.

19. The Government is the principal legal and political entity responsible for the human rights situation in the country. Furthermore, the onus of the majority of commitments contained in the Comprehensive Agreement falls on it. Nevertheless, as indicated in the second report (para. 18), it is the Mission's view that both the State and URNG are bound to respect human rights by virtue of the commitments made under the Comprehensive Agreement, in keeping with the trend to broaden the coverage of protection of and respect for these rights by different State bodies.

20. Certain sections of this report contain examples of specific cases, but the conclusions are based on overall findings of the verification process. As indicated in previous reports, the conclusions are based not only on statistical data but also on the problems revealed by the most serious situations, the reaction of State institutions and the attention given by the parties to the Mission's recommendations.

Commitment I. General commitment regarding human rights

21. Fulfilment of this commitment is assessed both from the point of view of the rights to which the Agreement gives priority and from that of the attention that the parties pay to the Mission's recommendations. These last-mentioned, in particular the recommendations relating to the campaign against impunity, have failed to elicit any initiative on the part of the Government to put them into practice, except for the establishment of a liaison committee, coordinated by the Presidential Human Rights Committee (COPREDEH), to work out a follow-up plan relating to the recommendations.

22. Similarly, no follow-up on any of the recommendations contained in the previous report has been made by URNG. The URNG Command has even questioned their justification in meetings with the Mission.

23. On the other hand, the Government and URNG have continued to cooperate with the Mission. One case in point during the period under review has been the Government's prompt action in ensuring that the Mission could operate in its central offices.

24. The Mission Director has expressed to the President his concern and revulsion at the taking of five international hostages, including three United Nations officers, on 28 June 1995; this was one of a series of unlawful acts aimed at preventing the return of refugees to San Antonio Tzejá, Ixcán (para. 152). This act constituted a serious breach of the commitment to cooperate, and specifically of the Government's duty to see to the safety of members of the United Nations Mission (Commitment X, para. 22 of the Comprehensive Agreement). The Mission, while recognizing the Government's actions to resettle these returnees, deplores the lack of initiative and effectiveness on the part of the authorities in dealing with these unlawful acts and their perpetrators, and the total absence of information on these events at the various United Nations offices.

Analysis of the verification of rights accorded priority under the Comprehensive Agreement

25. Between 21 May and 21 August 1995, the Mission received 2,156 complaints, 424 of which were admitted for verification. Compared with the previous report, this represents a 34 per cent increase in the number received and a 26 per cent decline in the number admitted.

26. Out of 1,282 cases verified since the Mission was set up, 511, or 39.8 per cent, have been closed. 1/ It was established that there was violation in 46 per cent of these cases. Slightly over 50 per cent of admitted complaints are being verified in order to gather the information necessary to reach a determination. The difficulty in shedding light on the facts and the persons responsible is a typical problem in dealing with impunity.

1. Right to life

27. During the period in question, 156 complaints were admitted of violations of the right to life, including deaths as a result of breaches of legal guarantees and extrajudicial executions (49), attempted extrajudicial executions (18) and death threats (89). The Mission reiterates its deep concern at the fact that the largest number of complaints admitted - 36.8 per cent - are of violations of the right to life and that the percentage of cases in which the victim actually loses his life is increasing. Another cause for concern is the fact that for the vast majority of cases described in previous reports, investigations led by national bodies have not led to identification and punishment of those responsible.

28. A number of complaints of brutal murders have been received where, if the victim was a public figure, the incident serves as a threat to persons and organizations connected to the victim; also, cases of extreme abuse of power against alleged offenders or ordinary citizens, where police or private matters that could be dealt with by lawful means are settled by the simple expedient of murder, a trend encouraged by the corrupting effect of impunity and the knowledge that law-enforcement agencies are ineffectual.

29. When the persons involved are, or are associated with, State agents, a number of recurrent situations have been noted: absence of summonses or arrest warrants, despite evidence identifying the perpetrators; false testimonies to throw the investigation off course; cursory internal investigations exonerating those responsible without reference to the courts; failure to enforce arrest warrants; persons who flee or avoid arrest; threatening and harassment of officials of institutions responsible for the investigation and prosecution of an offence, and of witnesses and their friends and family members or human rights organizations involved in the investigation.

30. It should be noted that many of the cases that have come to light over this period involve elements of the Treasury Guard, and, as indicated in previous reports, persons with links to, or under the control of, the army. Others reveal the actions of illicit organizations whose purpose is to commit crimes or

combat crime by criminal means. As long as they are allowed to continue unpunished, these groups remain a constant threat to the right to life.

31. This fact is supported by a statement by the Director of the Department of Forensic Medicine of the Judicial Branch indicating that every day, an average of 10 to 12 corpses are brought to the morgue, with point-blank gunshot wounds, frequently in the head, and with signs of their hands having been bound.

32. During the period under review, complaints of death threats mainly affected persons connected with human rights organizations, social and political leaders and public prosecutors. The alleged perpetrators include clandestine organizations which, while claiming to be fighting against crime and impunity, have been responsible for threats of this kind, have thwarted investigations of crimes against human rights, caused the resignation of public prosecutors in high-profile cases and intimidated relatives and prospective new victims.

(a) Extrajudicial executions or deaths in violation of legal guarantees

Case 1

33. On 24 June, the body of Manuel Saquic Vásquez, an evangelical pastor and Coordinator of the Human Rights Committee of the Kakchiquel Presbyterian Church in Chimaltenango, was found with 33 stab wounds, a slit throat and signs of having been tortured. The Magistrate and the police witnessed the removal of the body, which was then buried in an unmarked grave, despite the fact that it was public knowledge that he had previously disappeared. Negligence by State institutions in charge of investigating the case caused a delay in exhuming the body.

34. Official investigations lay the blame on a former military commissioner, also on trial for the murder of Pascual Serech, the founder of the Panajabal Human Rights Committee and a member of the same church. The delay in investigating the case has been compounded by the failure to enforce the arrest warrant of the accused, who has been frequently seen in Chimaltenango. According to witnesses, he has gathered his cohorts and announced to them that Saquic's murder will be followed by that of other members of the church. Judicial officials and staff of the Public Prosecutor's Office have reported that they have been watched by and received threats from the accused and his two sons, who belong to the army. Saquic's relatives and colleagues have also received threats. The Mission Director has described the murder as having very grave implications for the respect for human rights, pointing out that it was not a common crime but one designed to intimidate organizations and persons who work in defence of those rights.

Case 2

35. On 13 April, the body of Nery López was found on the road between Tecum Umán and Ocos, San Marcos. On the previous day, while having a drink in a bar opposite the Treasury Guard building in Puente Meléndez, he had had an altercation with the chief of that post, who then took him to the premises of the Treasury Guard. As a result of the internal Treasury Guard investigation, it was determined that the police chief detained him and took him into custody;

this was the last time he was seen alive. Nevertheless, up to the time when this case was closed, no one had been prosecuted, and the person involved was appointed Departmental Chief of the Treasury Guard in San Marcos.

Case 3

36. On 20 April, in San José, Escuintla, two individuals shot and killed Marvin Martínez Corado. Several witnesses have consistently given the same description and reported the registration plates of the vehicle of the attackers, claiming that they are officials from the paratrooper's base in the area. The deputy chief confirmed that the vehicle belonged to an official of the base who had passed by the scene of the murder shortly before the incident. Within five days, the internal investigation established that the officers were innocent. Since the end of May, the public prosecutor has relied on the witnesses' statements identifying the vehicle but has not sought official information on it. The most important witness has been the target of harassment and has been followed by the same vehicle used in the crime. A similar arbitrary execution attempt in the area and the fact that officers from the base have described the victim's family as criminals suggest that the motive could be the illegal fight against crime.

(b) Death threats

Case 1

37. Julio Arango Escobar, a public prosecutor in the so-called "Bámaca case" (para. 61), received several threats over the telephone. On 22 June, shots were fired at the Public Prosecutor's Office, destroying the window beneath his office. A few weeks later, he abandoned the case, citing personal reasons.

Case 2

38. On 28 June, two members of the Voluntary Civil Defence Committee (CVDC) of Xemal attacked and tried to kill Miguel Godínez Domingo, a member of the Committee for Peasant Unity in El Chorro, Huehuetenango, with machetes. When they did not succeed, they accused him of being a guerrilla and threatened to kill him.

2. Right to integrity and security of person

39. During the period under review, 87 complaints of violations of this right were admitted, representing 20.5 per cent of the total number of complaints. Many complaints again concerned cases of torture, the most serious type of violation of this right. The National Police were responsible for many cases of torture and cruel, inhuman or degrading treatment during the investigation or prosecution of ordinary crimes, a situation that was aggravated by distortion of the facts in official accounts in order to cover up for the perpetrators. The right to personal security was violated by threats made by public officials for various purposes, including extortion.

(a) Torture and other cruel, inhuman or degrading treatment

Case 1

40. On 13 July, Juan Colindres and Antonio Rivera were arrested by the National Police of Pueblo Nuevo, Escuintla, on a charge of attempted robbery. They state that the police subjected them to blows, electric shocks and hooding with a view to extracting confessions. They were taken to Granja Penal Canadá prison, where MINUGUA observed the signs of ill treatment a week later. The local National Police chief denied the facts, adding that the prison refused to admit injured persons. The prison director contradicted the police version, agreeing with the victims that they had been injured at the time of admission. An investigation by the Office of Professional Accountability identified the officers allegedly responsible.

Case 2

41. On 4 July, Daniel Sky Callahan, a United States citizen working at the invitation of the Commission on Human Rights of Guatemala, was beaten by three soldiers in the Plaza Central in Guatemala City as he was filming a peasant demonstration. He was placed under guard until the night of 7 July in District No. 1 of the capital. Unknown individuals held him for an hour in a vehicle, threatening him with reprisals if he remained in the country. Before setting him free, they beat him, especially in the genitals. The doctor stated that he had also been hit in the abdomen, the lumbar region and the neck by a person wearing boots. The victim left the country and had to undergo surgery.

Case 3

42. On 18 July, Juan Súchite Pérez was arrested and severely beaten by officers of the National Police of Gualán, Zacapa, who were joined by a civilian. According to the victim, an attempt was made to abuse him sexually in the police station, and relatives who tried to come to his assistance were held at gunpoint. The police attributed the marks on his neck to attempted suicide, an unlikely story under the conditions obtaining in the place of detention. No arrest warrant has been issued to date in the legal investigation.

Case 4

43. On 10 July, in Santa Elena, Petén, three National Police officers and two civilians entered the house of Edgar Reina without an arrest warrant, charging him with robbery. Witnesses state that he was beaten by his captors on the way to the Santa Elena police station. The medical certificate requested by the judge was not furnished on the pretext that "his release had been ordered on the day following his arrest". The police defended their behaviour on the grounds that the person concerned had struck the officers and attempted to escape, "falling on the ground, which accounts for his injuries".

(b) Other threats to the right to integrity and security of person

Case 1

44. On 15 May, in San Cristóbal, Totonicapán, members of the Guatemalan Widows' Coordinating Committee (CONAVIGUA), returning from a demonstration in vans, were intercepted by officers of the National Police. Forcing them to alight at gunpoint, they accused them of being guerrilla fighters and threatened them with arrest. After holding them for 45 minutes, they demanded money in return for not arresting them and seizing the vehicles. There are reports of similar cases involving police officers of sub-station Cuatro Caminos of the National Police in Totonicapán.

Case 2

45. On 31 May, in Poptún, Petén, officials of the General Department of Forestry and the Treasury Guard mounted an operation to stop illegal wood trafficking. The driver of a lorry carrying a load of wood, after identifying himself as a Treasury Guard officer, drew his weapon to prevent inspection. When the officials reported the incident to the Inspector of the Treasury Guard, he threatened to arrest them if they continued with the operations.

46. The Mission received new complaints of threats from elements connected with the army against judicial officials, persons branded as subversives or persons who do not patrol in the Voluntary Civil Defence Committees (CVDCs).

47. There have also been further complaints of threats by elements of the Unidad Revolucionaria Nacional Guatemalteca (URNG) against agricultural landowners in order to obtain payment of the so-called "war tax" (paras. 145 ff.).

3. Right to individual liberty

48. There were 43 complaints of violations of this right, representing 10.1 per cent of the total number of complaints. The large number of arbitrary detentions, in most cases practised ostensibly in the course of law enforcement and in some cases involving unnecessary and excessive violence, is again significant. They are carried out by National Police officers, sometimes accompanied by civilians, without a warrant or without the victims being caught in flagrante delicto. Police reports may be altered to make it appear that the victims were caught in flagrante delicto, that there were errors in the report or even that the arrest itself never took place. There have been further reports of arrests by military commissioners, CVDC members and deputy mayors, none of whom has legal authority to make such arrests.

(a) Arbitrary or illegal detention

Case 1

49. In the morning of 27 June 1995, in Chelajop, Totonicapán, members of the military arrested Luis Alvarado Cajchun, Agustín Vázquez Cop,

Antonio Castro Tax, Pedro Puajpacaja and Santos Castro as they were gathering wood for their own use. A soldier forced Alvarado to lie down on the ground and was beating him on the back with the barrel of his rifle when the gun went off. The victim had to be hospitalized. After making a statement to the justice of the peace, the persons in question remained in detention for two days. The military side states that the victims were felling trees and violently resisted arrest, but it was found on investigation that no such offence had been committed and they had been arbitrarily detained and ill-treated. The Mission is following the legal proceedings, which are seriously flawed.

Case 2

50. Diego Tum González, of the village of Buena Vista, Quiché, was arrested on 27 April by the military commissioner, the deputy mayor, the second in command and two CVDC members with the aim of making him pay a fine for not patrolling in November and December 1994. The victim remained in detention for 24 hours in the prison cell at the mayor's office. Leaving aside the fact that they have no legal authority to make arrests, the captors sought to justify their behaviour by alleging that the authorities had been insulted. They admitted, however, that their action had been influenced by the unpaid fine.

Case 3

51. On 4 July, in Huehuetenango, a teacher was arrested at the bus terminal by two plain-clothes National Police officers, who took him to the police station. Interrogating him while he was semi-naked, they charged him with robbery and insulted him for being a teacher. Although a judicial order of release was transmitted to the warden on 6 July, the latter, under the influence of alcohol, ordered that he should remain in detention for another night. The victim was finally released on 7 July, after a relative had been forced to bribe the warden.

(b) Enforced disappearances

52. The number of complaints during the period concerning alleged enforced disappearances declined to two cases, which are currently being investigated.

4. Right to due legal process

53. During the period in question, 60 complaints of violations of due process were admitted, accounting for 15.1 per cent of the total number of complaints. With regard to earlier cases, there has been no significant progress in the judicial investigations or in sentencing. The Mission continues to be very seriously concerned about this situation of virtual denial of justice, especially regarding the rights to life and integrity of person.

54. Impunity has been facilitated, in the case of both new and earlier complaints, by the failure to undertake inquiries that could have been made in a timely manner. In the case of a number of serious offences, including some that led to a pubic outcry or were perpetrated in areas with a high crime rate, the Public Prosecutor's Office has failed to initiate an investigation or to appoint

a prosecutor. It has been noted on a number of occasions that the competent bodies have failed to take statements from witnesses, that arrest warrants have not been issued in spite of evidence or else have not been served, and that persons involved in very serious offences have been allowed to escape or have been improperly released on bail.

55. According to the verification process, the fact that little or no progress has been made in the investigation of the majority of cases is basically due to the lack of will or ability on the part of the Public Prosecutor's Office to conduct criminal proceedings and the lack of forcefulness of its highest authority in implementing the necessary corrective measures. This is especially true where persons belonging to or associated with the Army are involved in cases for which the investigation has been brought to a halt under pressure. The public prosecutors have complained about this military interference in an area of State jurisdiction. In the face of such pressure and even serious threats, the authorities have failed to take timely action in support of the public prosecutors.

Case 1

56. With regard to the extrajudicial execution of Apolo Ariosto Carranza Vallar, following verification of the existence of a judicial order to bury the body without investigating the case (para. 39 of the second report), a witness and former police collaborator provided new information concerning the identity of the culprits and the circumstances of the crime. Yet the prosecutor of the case was appointed almost two months after the victim was exhumed.

Case 2

57. On 13 July, the judicial reconstruction and deposition of oral evidence took place in the case of Juan Chanay Pablo, a member of the Committee for Peasant Unity of Colotenango killed by CVDC members during a peasant demonstration. MINUGUA noted the unequal treatment given by the judge to the witnesses from the two sides. The 15 witnesses for the defence had three days to give evidence, while the 30 witnesses for the prosecution had only one day and were seriously hampered by the lack of an interpreter.

Case 3

58. There has been practically no investigation of the threats made in April 1995 against María Miranda Berdugo, local leader of CONAVIGUA, and Alfredo Temaj Pérezen, a member of another human rights organization in San Isidro, San Marcos. The Public Prosecutor's Office merely sent an official communication to military zone 18, asking whether the accused were military commissioners and receiving no reply. Initially, the prosecutor responsible for the case said that if they were commissioners "they cannot be summoned because they enjoy special privileges". The Mission's view that a threat is not an "essentially military" offence and does not fall exclusively within that military jurisdiction was subsequently shared by the prosecutor, who continued his work, albeit with some delay, on that premise.

Case 4

59. On 25 April, in the Santa Rosa market, Santa Rosa, National Police officers of Chiquimulilla illegally and arbitrarily arrested Lucas Luch Pulul, a minor of the Quiché ethnic group, without informing him of the reason for his arrest. He was charged before the judge with belonging to a gang of thieves and taken to Santa Rosa prison. As at 6 July, he had not been assisted by a defence counsel or an interpreter. His complaint of having been beaten in the prison compound has not been investigated either. At the time of writing of this report, the legal file had been lost and the minor was still illegally detained.

Case 5

60. In July, Juan Mendoza of the Kawabil Peasant Council was detained for 15 days in Huehuetenango prison, charged by the chief of the Chejoj CVDCs with usurpation of land and with "using insulting language". He could not make a statement or answer the charges before the judge because, according to himself, he speaks "only Mam and not Spanish" and he had no interpreter.

Cases cited in previous reports under this commitment

61. In the trial for the murder of URNG commander Efraín Bámaca (paras. 66-67 of the first report and para. 66 of the second), on 3 August the Court of Appeal established as a Military Appeal Court heard the complaint filed by the Public Prosecutor's Office and overruled the dismissal decision by the Military Court of First Instance in favour of 15 soldiers allegedly implicated. As the military judges sitting in the Court of Appeal refused to sign the decision, the Supreme Court had to order their replacement by alternate judges. Digging and exhumation in the place where, according to reports communicated to the Department of State of the United States, Bámaca's body was allegedly interred were suspended on three occasions, and the Public Prosecutor's Office has so far been unable to complete the exhumation. The soldiers' defence counsel exerted pressure and employed delaying tactics to prevent it, even citing orders by the President of the Republic.

62. The prosecutor Julio Arango Escobar, who took over the case on 11 May 1995, complained of being subjected to pressure, death threats and intimidation (para. 37). This prompted a decision by the Counsel for Human Rights requiring the competent bodies to assist the prosecutor in his work through the requisite cooperation and guarantees. Finally, on 1 August 1995 he resigned, repeating to the Mission that he was not receiving proper support from his own institution. During a period of nine months, the case has had three prosecutors, and virtually no progress has been made in the investigation.

63. The investigation of the execution of Myrna Mack (paras. 68-69 of the first report and para. 64 of the second) is still at a standstill because the Public Prosecutor's Office has utterly failed to fulfil its obligations. Since December 1994 it has neither assigned a prosecutor to the case nor instituted criminal proceedings, despite the lack of impediments, so that the right to justice has been denied. The obstacles to the appointment of a prosecutor reflect the fear of officials in the Public Prosecutor's Office and of lawyers to take part in a case involving the military.

64. In the trial concerning the murder of Jorge Carpio Nicolle (para. 70 of the first report and para. 65 of the second), the prosecutor confirmed to the Congress on 29 May 1995 the existence and loss of the report from the Quiché military zone concerning an internal investigation of the case, which had been submitted to the military staff in August 1993. At the time of the crime, the judge did not issue an admonition to the former assistant director of the National Police, who should have made a statement as an expert witness but who was sent to the United States for a course of studies just as the judge was about to start taking evidence. The judicial decision to amend the arrest warrant returned the investigation to square one, since it insisted on involving only common criminals, although the records contain new evidence that discredits the initial hypothesis. Both the prosecutor and relatives claim to have sufficient evidence to show that the fourfold crime, for which the modus operandi was an ambush and whose chief perpetrators were allegedly members of a CVDC, was politically motivated, rather than the work of common criminals as recently maintained by the President of the Republic himself. This is another case in which the continuous harassment of a prosecutor has not met with a firm response on the part of the highest authorities of the Public Prosecutor's Office.

65. The trial concerning the murder of three workers on the San Juan del Horizonte farm (La Exacta) in Quetzaltenango (para. 67 of the second report) has made no progress. Four months ago, the Attorney General undertook to appoint a prosecutor, a court officer and an official with special responsibility for the case, but no action has been taken. The Coatepeque Court has also been unjustifiably dilatory, for example neglecting to reply for three months to requests to authorize the interrogation of the National Police officers involved in the eviction.

66. With regard to the investigation into the murder of the student Mario Alioto López Sánchez (para. 74 of the first report), both the Public Prosecutor's Office and the judiciary have remained totally passive. Although little time is left to draw up formal charges against National Police officers, the metropolitan district prosecutor has taken no great interest in the investigation of his assistant prosecutor; the Court of Second Instance, for its part, has employed delaying tactics on several occasions. The investigation by the Office of Professional Accountability ended last March without an analysis of the plan of action used by the National Police at the student demonstration or of the responsibility of, inter alia, Carlos V. Escobar Fernández, second in command of the Fifth Corps of the National Police, who was subsequently arrested by court order at the request of San Carlos University and the Public Prosecutor's Office, which shows the reluctance of the National Police to investigate the case.

5. Political rights

67. The Mission received a small number of complaints concerning specifically political rights, a fact that should be assessed in the light of a political environment with little tradition of participation and a context fraught with violence. The Mission is particularly concerned by acts of violence against political candidates and figures registered since the announcement of elections:

the murders of the mayor of Moyuta, Jutiapa, who was running for a congressional seat, of candidates for mayor of La Democracia, Huehuetenango, and San Lucas Tolimán, Sololá, of two activists campaigning in San Jerónimo, Baja Verapaz, and of a senior political party leader in Petén; the attempted kidnapping of a candidate for mayor of Nuevo Palmar, Quetzaltenango; physical assaults on a candidate for mayor of Momostenango, Totonicapán; an attack on the house of Efraín Rios Montt and another on the residence of the mayor of Chiquimula.

68. With regard to the electoral authority, the Mission has taken stock of the good public image of the Supreme Electoral Tribunal in terms of both its financing and the professionalism of its magistrates and officials. In addition, it has verified the smooth functioning of its delegations and sub-delegations. However, an institutional difficulty that seriously discourages electoral participation is the fact that the Tribunal offices and branch offices are confined by law to municipal capitals, so that persons living in remote areas have difficulty in registering.

69. With regard to the right to enrolment in the citizens' register, almost one third of the voting-age population are still unregistered, mainly owing to the lack of basic documentation. This deficiency is particularly prevalent among women in rural areas and the returned and displaced population. In that connection, adoption of the bill on the personal documentation of the country's displaced population is still pending (para. 69 of the second report).

70. With regard to the November elections, the electoral roll closed on 12 August, remaining open for amendment and purging until 12 October. According to provisional figures, the roll contains over 3,600,000 individuals, representing an increase of more than 100,000 persons over the roll under which the 1994 referendum was held (3,480,196 registered voters). These figures indicate that about 70 per cent of the population of voting age, i.e., over 18 years of age, is registered to vote.

71. There are significant differences in the electoral roll between registration rates for men and women and between the country's departments and municipalities. These differences reflect both historical circumstances of political demobilization and lack of basic documentation and new circumstances of greater participation. The proportion of women on the roll, at about 40 per cent, is less than their proportion in the country's overall population, which is about 52 per cent. The rates of female voter registration are higher than the national average in the departments of Guatemala, Chimaltenango, Retalhuleu, Sacatepéquez and Quetzaltenango, with Guatemala heading the list at 48 per cent. On the other hand, female enrolment is lower than the national average in Petén, Chiquimula, Jalapa, Sololá, San Marcos, Huehuetenango, Quiché, Alta Verapaz and Totonicapán, the proportion in the last-mentioned department being 22 per cent.

72. The proportion of registered voters is above the national average of 70 per cent in the departments of Guatemala, Chiquimula, Zacatepéquez, Santa Rosa, Quezaltenango, Retalhuleu, Zacapa, Jutiapa and El Progreso; in the last three departments mentioned, the proportion is about 90 per cent of the population over 18 years of age. On the other hand, the enrolment rate is less than the national average in Izabal, Huehuetenango, Sololá, Escuintla, Petén,

Totonicapán, Quiché and Alta Verapaz; in the last three departments mentioned, the proportion is about 50 per cent of the population over 18 years of age.

73. With regard to the right to hold public office, the Mission verified that registration of citizens' electoral committees, the deadline for which expired on 12 August, proceeded normally. According to data provided by the Political Organizations Division of the Supreme Electoral Tribunal, 144 committees have been registered. In addition, the Mission closely followed the process of registration of candidacies of the different political parties, the deadline for which expired on 12 September.

74. With regard to the right to participate in political activities, the Mission is monitoring the election campaign, in particular the State's duty to guarantee the full exercise of that right by all citizens and the duty of URNG not to obstruct its effective enjoyment.

6. Freedom of expression

75. During the period in question, three complaints regarding violations of this right were received, bringing the figure above that indicated in the preceding report. One complaint, which is in the process of verification, concerns the exercise of the profession of journalism; the others involve the freedom of expression of individuals working to promote human rights.

Case 1

76. On 16 July, during a meeting between MINUGUA and the community of Amatxel, Quiché, a member of the Defensoría Maya (Mayan Legal Defence Office) had begun to read out various reports concerning local CVDC meetings. The head and several members of the Committee attempted to prevent this, claiming that he had no right to write about or publicize reports on the situation in the municipality. MINUGUA observers noted that the aggressors seized the Mayan Legal Defence Office representative's documents and destroyed them.

7. Freedom of movement

77. The Mission has verified new complaints that URNG members restricted freedom of movement by setting up roadblocks, some of them on major roads, thereby impeding free movement and causing unwarranted damage to civilian property.

Case 1

78. On the morning of 25 June, on La Trinidad bridge along the coastal highway leading to El Salvador, Santa Rosa, five heavily armed persons in olive green uniforms blocked the road with lorries, shooting at the tyres. They identified themselves as members of URNG and stated that they were staging a public protest against the Government. Police officers reopened the road to traffic four hours later.

79. In the process of verifying other violations committed by military commissioners and members of CVDC, violations of the freedom of movement committed with impunity were also revealed in connection with the return of refugees.

8. Freedom of association

80. Although no complaints were received about violations directly linked to trade union activities during the period in question, complaints continued to be received of violations of the right to swift and effective justice, involving leaders or workers who were subjected to threats, dismissed or subjected to reprisals because they organized themselves into trade unions or asserted their interests as workers. Reports also were received of situations involving the right to freedom of association of non-governmental organizations (para. 132), and the Mission is in the process of verifying administrative obstacles that such organizations face when seeking legal status.

81. Despite the fact that Guatemalan legislation protects organized workers who have filed suit and compels employers by judicial order to reinstate those who have been dismissed within 24 hours, the Mission verified a number of cases involving dismissed agricultural workers who had not been reinstated even though six months had passed since the labour tribunal had issued the relevant order.

Case 1

82. In October 1994, three trade union leaders from the El Arco farm in Suchitepéquez were dismissed after forming a committee for the purpose of improving their working conditions. During the verification process, it was learned that the labour judge had taken two months to order the workers' reinstatement and another four months to notify their employer. Even so, the workers still have not been reinstated. The Public Prosecutor's Office and the Mazatenango police have refused to act on a complaint filed by one of the workers that he had been subjected to threats and violently evicted.

Commitment II. Strengthening institutions for the protection of human rights

Judiciary and Public Prosecutor's Office

83. Verification activities during the period in question indicate that judges and prosecutors have again been subjected to threats, intimidation and even attacks on their person. As a general rule, the Government has not taken steps to protect such officials and, what is even more serious, has neither investigated nor imposed any punishment in the many cases involving acts perpetrated, assisted or tolerated by State agents.

84. Previous reports by MINUGUA have repeatedly underscored how severely the work of judges and prosecutors is affected by the intimidation, pressure and threats to which they are subjected and by the fact that they receive scant assistance from the police and other public officials. Although aware of the situation, the Government has neither devised nor implemented a policy to combat the phenomenon, nor has it instituted in a timely manner preventive and

protective measures that are required. The Government's failure to take action has intensified the feeling among judges and prosecutors that their personal safety is in jeopardy and that they have no support in the discharge of their duties. The cases of prosecutors Julio Arango (para. 40) and Abraham Méndez (para. 43 of the first report and para. 96 of this report) illustrate this situation.

Support for the Counsel for Human Rights

85. The Mission examined the Counsel's publicly expressed claims that the Government, by failing to strengthen this institution, was in violation of the Comprehensive Agreement. MINUGUA also considered the President's response, which acknowledged the validity of the Counsel's claims and stated that they provided grounds for the State to revise its decisions; the President also said that he had reminded his ministers that they must obey the resolutions of the Counsel and that they were required by the Constitution to cooperate with him. Verification revealed that the President's instructions did not result in an improvement in the attitude of State institutions during the period under review.

86. Although it recognizes that it is the responsibility of the Congress to approve the budget, the Mission is not aware of any action by the Government to improve the technical and material conditions available to the Counsel in carrying out his tasks of investigation, monitoring and follow-up to ensure the enjoyment of human rights in Guatemala, as called for by the Comprehensive Agreement.

Commitment III. Commitment against impunity

87. Impunity, which the Mission has called the most serious obstacle to the enjoyment of human rights in Guatemala, is a factor whose existence has increasingly become a source of profound concern and a spur to action in Guatemalan society. The Congress demonstrated a particular interest in the matter during its meeting with MINUGUA to discuss its second report, and a number of legislative initiatives to deal with the phenomenon were envisaged. The rampant nature of impunity has heightened public awareness at all levels and has led to the establishment of organizations such as "Madres Angustiadas" (Anguished Mothers), which are working to mobilize society and exert pressure on the competent institutions to end impunity. On a very positive note, these and other sectors, including the communications media, the churches and other institutions, have been expressing concern about this phenomenon, demonstrating a growing awareness of how serious a problem impunity has become, and of the need to combat it.

88. This section analyses the components of impunity, with particular emphasis on the institutions responsible for preventing, investigating and combating it.

(a) The defective functioning of the Public Prosecutor's Office, the judiciary and the security forces responsible for preventing and punishing crime

89. The Mission has stated that correcting the lack of coordination among the Public Prosecutor's Office, the judiciary and the National Police should be a

key component of the required comprehensive policy against impunity (para. 203 of the second report). In the absence of such a policy, this lack of coordination persists and seems to be insoluble. Even worse, it is perpetuated by the defensive stance of the institutions concerned, all of which attempt to justify their shortcomings by blaming one another: prosecutors assert that they are unable to conduct investigations because they receive no help from the police; the National Police claim that they lack the legal authority and logistical means to act; and judges assert that they do not have enough evidence to issue arrest warrants. The peculiar characteristics of the phenomenon cannot be explained solely by such arguments; rather, they can be attributed to the fact that the supreme authorities of the State have no decisive policy for overcoming the often observed unwillingness to investigate and administer punishment, and to the lack of coordination among the bodies having the legal duty to take such action.

Public Prosecutor's Office

90. In general, verification of the performance of the Public Prosecutor's Office has revealed a very inadequate understanding of the basic information needed to devise a strategic policy for investigating crime, a lack of knowledge as to how to organize this effort and a poor relationship with the National Police. These factors are among the structural causes of the Office's weakness in the campaign against impunity.

91. The Mission also has observed that, in most of the cases considered, investigations are paralysed primarily by the lack of a clear institutional willingness to prosecute crimes involving members of the army, army-related personnel or agents of the security forces. One example is the attempted murder, on 28 June, of a member of the Comité de Unidada Campesina (Committee for Peasant Unity) attributed to two members of a patrol in the municipality of Xemal; two months after the crime an investigation still has not been launched because the responsible prosecutor claims he does not have the time.

92. The Mission noted many instances in which officials of the Public Prosecutor's Office were unwilling to follow up on complaints. Of particular concern are the many cases in which complainants are told that "they personally would have to bear the burden of the investigation if criminal proceedings were initiated", an allusion to the fact that they not only would have to pay the costs of the Office's investigation, but also would be putting their lives in danger.

93. The strong public statements by the Attorney General, which many sources interpreted as forecasting the adoption of a decisive policy for winning back public trust in the institution, have not been translated into concrete action. For example, no meaningful or exemplary measures have been adopted following serious mistakes by prosecutors which might result in there being no judicial investigations of very serious and sensitive cases (second report, para. 66). Even in cases in which the crime victims were officials of the Public Prosecutor's Office, no particular interest was shown in investigating the facts. An excellent example is the case of Abraham Méndez, a prosecutor who was interrogated twice in late May in the Attorney General's office by persons

identified as members of the President's staff. Efforts to intimidate him have continued, including a night raid at one of the locations where he works, since he has no office of his own in the Public Prosecutor's Office. Thus far, the Office has failed to investigate these acts or the attempt on his life in November 1994.

Judiciary

94. The previous report stated that most members of the judiciary discharge their responsibilities with independence, judicial integrity and determination. Nevertheless, shortcomings of the judiciary - such as delays in issuing arrest warrants or overly broad criteria for release on bail with security, particularly in cases involving serious crimes (paras. 53-60) - also have been shown to encourage impunity.

95. The Mission views with even greater concern cases involving judges who obviously take decisions which encourage impunity. This was the case of a circuit judge posted at Sololá in June who in just a few weeks dismissed more than a dozen cases, some involving agents of the State who had committed serious violations of human rights. The Mission has not yet learned the conclusions of the special committee of the Supreme Court of Justice established to study this matter.

96. Under the Constitution, jurisdiction is vested solely in judges, who preserve their independence both within and outside the judiciary and are answerable only to the law. MINUGUA is deeply concerned at attempts - originating both outside the judiciary and in internal procedures implemented by the judiciary - to interfere with the judiciary's independence, since such attempts have an impact on those constitutional prerogatives and undermine the campaign against impunity.

97. This independence is jeopardized from the outside by threats against judges, a situation which the Supreme Court of Justice has condemned, and by the fact that military judges of first instance are based in military zones and thus are subject to the influence of or pressure from individuals having a personal or institutional interest in the cases before them.

98. Internally, the independence of judges also is restricted by problems which can undermine their role in the campaign against impunity, such as the non-existence of the principle of continuity. This may be ascribed to the fact that the Supreme Court may reassign judges at any time and for any reason, which can lead to manoeuvring in an attempt to remove a judge from a particular case and can affect the routine work of the courts. For example, during a period of only three months, five judges presided over the second criminal court of first instance of Cuilapa, a situation which the last judge used to excuse the paralysis of the judicial investigation, adding that the only official knowledgeable about the cases had been transferred and had not been replaced.

99. The judiciary's independence is also undermined by the imposition of disciplinary measures, which may even include removal, by the Supreme Court acting on the basis of reports of the Office of Court Supervision. There are no

rules governing this procedure and it has resulted in violations of due process, admitted by the Constitutional Court, which ordered the reinstatement of a number of judges who had been removed.

National Police

100. The National Police Command, through its Office of Professional Accountability, continued to pursue internal investigations of police officers involved in violations of human rights, both on its own initiative and in response to information from MINUGUA. Although it acknowledges their value, the Mission must point out that while such efforts are by their very nature effective in resolving specific cases, they are no substitute for the comprehensive policy that is required, nor can they compensate for the institutional deficiencies of the police in the campaign against impunity.

101. The institutional deficiencies with the greatest impact on police performance are: (a) insufficient personnel; (b) inadequate staff training and a shortage of the equipment needed for their work; (c) the consequent recourse to the military infrastructure in order to discharge their duties; (d) illegal external pressures which limit police investigations; and (e) the lack of effective coordination with the Public Prosecutor's Office with a view to the effective pursuit of investigations, including confusion regarding the role of the National Police under the new criminal procedure system.

102. In addition to the reported corruption, resources are scarce and police presence is minimal, all of which, given the high incidence of crime, make it impossible to guarantee the safety of the population. The police/population ratio in Guatemala is 1:2,200, whereas international standards set the target at approximately 1:500. There are roughly 2,000 agents in Guatemala City, plus additional manpower from other special forces, whereas in the departmental capitals there are not enough police and there is a shortage of transportation, liaison and communication facilities.

103. The ability of the National Police to track down criminals is severely limited. By way of illustration, the Mission has noted that no more than 5 per cent of homicide cases have been solved, a blatantly low figure compared to other countries. Although the number of persons reported to be in custody is fairly high, only a small percentage are being held for serious offences, which shows that there is a clear tendency to arrest people for misdemeanours while perpetrators of serious crimes or violations of human rights go unpunished (para. 36).

(b) The existence of illicit associations linked with crime and with financial or other interests which may enjoy the support, the complicity or the tolerance of State agents

104. Verification has shown that during the period in question illegal groups of various types continued their operations and that they not only are among those enjoying impunity, but also fall within the ambit of commitment IV of the Comprehensive Agreement. The characteristics of their modus operandi were observed in cases involving violations of the right to life, some of which are

referred to in this report (paras. 36-37). Some of these groups, which were formed for the purpose of committing murder and other crimes, have operated with impunity for many years, facilitating and covering up crimes and participating in so-called "social cleansing" operations, in which criminal acts replace legal action on the part of security forces.

105. In many of these cases, the participation or collusion of army or police officers is obvious, and their actions are not always politically motivated. The fact that persons who are subjected to threats do not dare to lodge complaints with or testify before State institutions and the fact that judges and prosecutors are afraid to investigate criminal groups are indicative of a climate of fear which guarantees the impunity of such groups, making it very difficult to bring them before the courts, prove their culpability and sentence them.

106. The activities of illegal security forces and clandestine structures also have affected the functioning of the administration of justice system, given the threats and climate of intimidation surrounding not only judges and prosecutors, but also the lawyers of victims of human rights abuses and their families, and defence lawyers.

107. Particularly troubling are the threats against and murder of citizens who help to elucidate crimes and violations by testifying or providing information to the police, prosecutors or judges. One such case involves the murder of Sidney Geovany López, an official in the Public Prosecutor's Office, in which one of the three witnesses who testified was murdered and the other two received death threats. Public statements by prosecutors indicate that 90 per cent of judicial proceedings involving acts which have an impact on society are obstructed because eyewitnesses refuse to come forward and provide information.

Case 1

108. The Mission received a number of complaints about murders and death threats attributed to a band of criminals operating in the San Miguel Chicaj region of Baja Verapaz. The complaints all state that this band, which had been operating with impunity for years, is headed by a military commissioner and that its members include army officers. Fearing reprisals, a number of families which have received threats have abandoned their municipality and refuse to file formal complaints with the Public Prosecutor's Office or the National Police.

Case 2

109. On 14 October 1994 Héctor Rolando Tot was kidnapped at the Cobán bus terminal in Alta Verapaz by individuals driving a Toyota Hilux with polarized windows; his whereabouts are still unknown. Verification showed that he had been the victim of a "social cleansing" operation involving State agents, according to information provided to MINUGUA. The victim was known to be a member of a band of thieves operating along the Cobán-Chisec road. Neither the National Police nor the Public Prosecutor's Office initiated a serious investigation, and one of these institutions stated that it feared reprisals if it did take such action.

(c) The autonomy enjoyed by the army in its counter-insurgency and anti-subversive activities, the procedures it uses in this sphere and the broad interpretation it gives to those concepts

110. Verification has made it clear that the origin of this component of impunity does not lie only in aspects directly or indirectly related to counter-insurgency and anti-subversive activities; its source is much broader and extends to the protection the army gives to certain of its members implicated in cases of corruption or common crime. For example, despite the seriousness of the accusations against a high-ranking officer (paras. 39 et seq. of the second report), not only did the army take a passive attitude towards the internal investigations conducted and in support of justice, but it arranged for the officer to be transferred to command another military zone, perhaps of even greater prestige.

111. The complaints submitted to the Mission by some investigators and judges, in conjunction with much other information received about the existence of intimidation and threats (paras. 37 and 93), as well as the army's failure to comply with legal requirements (para. 58) are also elements pertaining to impunity.

112. Although during the period under review the army has limited its military actions strictly to the context of the armed conflict, an attitude which attenuates the effect of this component of impunity, in some areas they continue to allege that the human rights non-governmental organizations, the Counsel for Human Rights and MINUGUA are attempting to dissolve the CVDCs, and allude to the fact that the Mission's mandate is temporary, while the army is permanent, which promotes the impunity with which the civilian patrols act.

113. The Mission believes that participation of members of the army in the judging of crimes that are not specifically military hinders due process inasmuch as it is the State's duty to investigate and punish. During the period under review, the cases in which members of the armed forces were found to be involved in judicial proceedings show that the Mission's recommendations with respect to the necessary reforms of the current system of military justice, in particular article 546 of the Code of Criminal Procedure, are especially urgent. Establishing a special court to deal with crimes that are not specifically military constitutes a privilege incompatible with the rule of law, since all citizens accused of common crimes should be tried before the same courts.

(d) Control exerted over rural communities by military commissioners and Voluntary Civil Defence Committees (CVDCs)

114. In the second report, the Mission recommended that the Government should not allow military commissioners and members of the Voluntary Civil Defence Committees to continue to exercise functions which are essential and indelegable duties of the State, and that the army should prevent, investigate and correct human rights abuses and violations committed by them. In this context, it is noteworthy that the President of the Republic, on Army Day, announced that he would order the dissolution of the military commissioners, a process that would be completed on 15 September 1995. The Mission considers this a positive step, but its effects on the situation of human rights in Guatemala will also depend

on what safeguards are adopted regarding the future conduct of the many military commissioners who have repeatedly violated those rights. The Mission will continue to verify attentively the State's fulfilment of its duty to guarantee human rights, in relation to the future behaviour of this sector.

115. Although the precise scope of the presidential announcement is not yet known, the announcement is interpreted as meaning that the commissioners will be demobilized. The definitive elimination of this section of the act establishing the army will require the Congress to adopt an amendment, and a Government initiative to that effect is already under way. In any case, the Mission believes an information campaign is needed, supported by the army and directed at the communities, to explain what the new situation will be once the dissolution of the military commissioners is complete.

116. With regard to the investigation and rectification of abuses on the part of the CVDCs, no significant progress has been made. New complaints have been received against them, including reports of harassment of returnee villages and intimidation of settlers to influence their vote. Of particular concern is the impunity which continues to be found as seen in the several cases reported below.

Case 1

117. The arrest warrants against Rubén Cruz López, head of the CVDC at Txel, Quiché, five patrol members and a former deputy mayor, which were issued on 8 August 1994 and reissued on 4 May 1995, have yet to be executed. The men are accused of murdering three people and burying them illegally, and there is convincing evidence of their guilt. Neighbours in Txel affirm that Cruz and his accomplices are at large in the community without fear of detention, and that he continues to head the CVDC and attends regular meetings at the military base. He also is accusing members of human rights organizations of being guerrillas and threatening members of the murder victims' families and anyone else who might dare to report or testify against them.

118. While one reason the abuses, human rights violations or crimes allegedly committed by military commissioners and members of CVDCs, whether for political or general reasons, continue is that the people are afraid to say anything, the main reason they continue is that, in much of Guatemala the institutions responsible for maintaining public order and administering justice either do not exist or are very weak.

(e) The proliferation of and lack of control over the possession of firearms by private individuals

119. This element is examined in the section dealing with Commitment IV of the Comprehensive Agreement (paras. 124-125).

Characterization of enforced disappearance and extrajudicial execution as crimes

120. The amended Criminal Code, which characterizes extrajudicial execution and enforced disappearance as especially serious crimes and establishes penalties

for such crimes, entered into force on 14 July 1995. The Mission believes that the publication of that decree contributes to the fulfilment of the Government's commitment.

121. Nevertheless, and without prejudice to its respect for the prerogatives of the Legislative branch, the Mission considers that extending the death penalty as the decree does, to cover categories of crimes not previously included in the Penal Code, is contrary to the spirit and the letter of the American Convention on Human Rights.

122. Moreover, the Mission still has no evidence that the Government has taken measures to characterize enforced disappearance and summary or extralegal execution as crimes against humanity.

Commitment IV. Commitment that there are no illegal security forces and clandestine machinery: regulation of the bearing of arms

123. The commitment regarding illegal security forces and clandestine machinery, as well as the purification and professionalization of the security forces, is analysed in the section relating to Commitment III of the Comprehensive Agreement (paras. 104 ff.).

Possession, bearing and use of firearms

124. Whereas the previous report recognized that some positive, though inadequate, measures had been taken in this area (para. 109 of the second report), no new measures have been taken during the period under review. The number of individuals bearing firearms has risen sharply, facilitated by the fact that commercial establishments sell firearms cheaply and take care of the licensing formalities, issuing licences along with the weapons, since there are no requirements that cannot easily be met. Furthermore, since there are no restrictions, large quantities of weapons and ammunition enter the country any type of weapon or ammunition can be obtained on the black market. Ninety per cent of all weapons seized by the police are illegal, and eight out of ten violent crimes are committed with firearms.

125. People should require special authorization in order to bear a weapon and the State should grant such authorization only after verifying that a real need exists. The only effective way to control and regulate the problems mentioned is to draw up strict legislation prohibiting anyone from bearing a weapon without authorization, and prohibiting anyone from brandishing a firearm, whether or not they have such authorization. An effective system of control should also be implemented to regulate the circulation of weapons in the streets. Until such time as the purchase, possession, bearing and use of firearms is strictly controlled, the incidence of violence in the country is unlikely to decrease.

Commitment V. Guarantees regarding freedom of association and freedom of movement

126. During the period covered by this report, the Mission has continued to note some progress inasmuch as people are now free to choose whether or not to belong

to the CVDCs. In this regard, it should be noted that the CVDC of Setul, town of Sayaxché, Petén, was dissolved at the initiative of the military commissioner, who opted not to use the procedure provided for in the Comprehensive Agreement; in the presence of the commander of the military base at El Tucán, the committee drew up a document stating that the committee was being dissolved and all the members of the patrol signed it. The base took back the weaponry and the log book, and thus the CVDC was dissolved.

127. Even so, in many communities there are still patrol members who persist in calling anyone who does not wish to go on patrol or who is a member of a human rights non-governmental organization a guerrilla. In some cases, the army's efforts to point out that membership in CVDCs is voluntary and to explain to the community the role of human rights monitoring organizations, especially the Office of the Counsel for Human Rights and including MINUGUA, has had positive results in that intimidation and harassment have ceased.

128. The Mission, in verifying violations of priority rights, has come across numerous cases and situations in which responsibility lies with members of CVDCs, the common characteristic being a high degree of impunity, as has been discussed more fully in the section referring to Commitment III.

Commitment VI. Military conscription

129. Based on the complaints received, the Mission has not noted any cases of forced military conscription. Voluntary service is the only type in effect until a new military service act enters into force. However, since this report was completed, the Mission has learned that the Counsel for Human Rights had received complaints of lack of compliance with this commitment. The Mission will therefore continue to monitor this carefully in future.

130. It has been found that not all communities are aware of the situation; this has caused concerns and misunderstanding in some limited cases, but these can be remedied with better information.

Commitment VII. Safeguards and protection of individuals and entities working for the protection of human rights

131. During the period under review, situations arose which affected the safeguards of those persons working for the promotion and protection of human rights. The most serious was the murder of Manuel Saquic, Pastor (para. 33), followed by threats to other persons in that field. In the same vein, a United States citizen connected to the Commission on Human Rights of Guatemala was subjected to ill-treatment (para. 41). Some non-governmental organizations working in the field of human rights were the target of actions inconsistent with this commitment. Furthermore, verification shows that some people, particularly members of the army and CVDCs, continue to equate the activities of such organizations with those of guerrillas and subversives, and to try to intimidate persons who seek to promote human rights activities.

Case 1

132. Since 21 July, the Mission began to verify that the headquarters and members of the Centre for Legal Action in Human Rights, a well-known non-governmental organization dedicated to the protection of human rights, were under constant surveillance. As a result of the verification, it was learned that one of the vehicles used in this surveillance was registered as the property of the Presidential Staff.

Case 2

133. In the village of Sajquim, San Marcos, as part of its educational outreach the Catholic Church offers adult literacy classes, using materials that focus on human rights. At a meeting called by the military commissioners on 9 March the students were told that they must not attend the classes because the content helped the guerrillas. After hearing this, a large percentage of the students stopped attending.

Commitment VIII. Compensation and/or assistance to the victims of human rights violations

134. As of the end of this reporting period, the Mission has not received any information on the entities responsible for devising government measures and programmes of a civilian and socio-economic nature to assist the victims of human rights violations. This information had been requested during the first reporting period, in order to evaluate progress in the fulfilment of this commitment.

135. In view of the fact that the Comprehensive Agreement did not establish a specific deadline for fulfilling this commitment, and bearing in mind the various types of difficulties which must be overcome for the Agreement to be fully and effectively implemented the previous report had recommended, as a first step, that a plan of action should be drawn up. The Mission is concerned to see that there is no indication thus far that the relevant governmental bodies have heeded the recommendation.

Commitment IX. Human rights and internal armed confrontation

136. During the period covered by this report, the Mission verified complaints of alleged violations by both parties of the commitment to respect the human rights of those wounded, captured and those who have remained out of combat, as well as to end the suffering of the civilian population.

Suffering of the civilian population

137. URNG actions which constitute violations of the commitment to end the suffering of the civilian population inasmuch as they have placed civilians at risk as a result of attacks against military bases, have continued to be verified. Although URNG claims that the risk to the civilian population in this type of action is due to the particular location of the military bases, which are built in population centres or near inhabited areas, verification has shown

that in many cases, the risk has resulted from improper planning or execution of actions by the guerrillas. Some of these cases are summarized below.

Case 1

138. On 21 July at 3 a.m., the military barracks at Alotenango, San Juan Alotenango, Sacatepequez, was attacked by URNG from the front, with rifle fire and by an RPG7 grenade launcher. This incident left one soldier wounded by shrapnel and damaged the homes of civilians, with clear risk to persons.

Case 2

139. On 4 July, members of URNG launched grenades into the barracks of the Honour Guard Brigade in the capital, one of which landed in a private garage, causing damage to civilian property. The action was particularly serious because of the inherent risks, although fortunately, no casualties were reported.

140. Cases of explosions of mines or explosive devices causing civilian deaths were also verified. Verification is difficult, particularly when it involves attempting to determine the specific origin, or the time the device was planted. The following case stands out because of its tragic consequences:

Case 3

141. On 19 July at 1.45 p.m., an explosion occurred on the road between the canton Chujuexa II-A, Cupol, Municipality of Chichicastenango, at the community school. The blast killed Nicolás Méndez Bat Cibal (11 years old), and his brothers Victor Méndez Morales (10 years old) and Diego Méndez Morales (8 years old) and left a hole 1.1 metres deep and 23 cm wide at the top.

142. The adoption of Decree Law No. 60/95, concerning the reduction of risk to the inhabitants of areas affected by the armed confrontation, by means of the removal and deactivation of mines and other explosive devices is a positive step the Congress has taken in the difficult task of eliminating these devices, which, in many cases, cause civilian casualties. In order for the proposed plan to be effective, it should be accompanied by precise details about mined areas, mines, ammunition or explosive devices, which the army or URNG could provide to the agencies responsible for its implementation.

143. Once the election campaign was under way, URNG proceeded to occupy certain localities, and generally to engage in political propaganda activities. These activities, which do not, in themselves, constitute a violation of the Comprehensive Agreement, in one or two cases, such as that illustrated below, resulted in injury to civilians or private property, and that is a violation of the Agreement. The possibility of retaliation by the army presents another risk.

Case 4

144. On 4 July, about 100 URNG members occupied various hamlets of Quetzaltenango. At 1 p.m., the driver of a truck transporting goods of the

Transval company, apparently believing that he was about to be attacked, did not stop at a guerrilla checkpoint in the vicinity of Concepción Chiquirichapal. The officers at the checkpoint fired at the truck, seriously wounding a security guard and slightly wounding the company accountant. The driver stopped at a second checkpoint, where URNG members asked other civilians to take the wounded to Quetzaltenango.

Actions related to the "war tax"

145. In its second report, the Mission stated that it had reiterated to URNG, in connection with the so-called "war tax", that the threats which have accompanied demands for such tax in the cases reported to it, and injury to persons, are violations of human rights accorded priority under the Comprehensive Agreement and that, by the same token, actions against civilian property or reprisals are violations of Commitment IX of that Agreement. MINUGUA made its position known in a public statement issued after the second report was completed but before its publication.

146. Verification has brought to light ongoing complaints of threats and actions against civilian property, carried out by URNG during attempts to collect the tax. As indicated in the second report, this situation is further complicated by the fact that third parties take advantage of this practice of URNG to extort money from private individuals for their own benefit.

Case 5

147. On 31 May at 12 p.m., five URNG members appeared at the Nicte estate, Sayaxche, Petén, to collect the war tax. When they could not come to an agreement with the foreman, they burned the estate's tractors and radio communications equipment.

Wounded and captured combatants

Case 6

148. On 22 June, in the vicinity of the place known as Boquerón Viejo, Nebaj, an ambulance belonging to the volunteer fire department carrying three soldiers in civilian clothes, which was on its way to evacuate two soldiers wounded in a prior encounter, was detained by URNG members for an hour, after which it was forced to go back, thus impeding the evacuation.

149. Former guerrilla Emilio Paau, who, after surrendering voluntarily, had been burned with cigarettes in the military base at Petén (para. 138 of the second report), was coerced by soldiers in the military zone into signing a paper denying that he had been mistreated and declining to take any legal action against the army.

150. Currently, the Mission is investigating a number of reports related to this commitment, including a URNG report on the death of guerrilla Emiliana Patrocinia Mazariegos, which, according to the army, occurred as a result of the confrontation of 13 August 1995 at the El Bramadero farm in Petén. By order of the justice of the peace, the body was buried the following day

before an autopsy could be performed, on the pretext that it was in an "advanced" state of decomposition. However, the URNG report states that the combatant was captured alive.

Displaced persons, refugees and returnees

151. In the performance of its functions, the Mission has continued to take into account the situation of the most vulnerable groups in society and of the population directly affected by the armed conflict, such as displaced persons, refugees and returnees, and has continued to cooperate with the Office of the United Nations High Commissioner for Refugees in resettling returnees in various departments. In addition to investigating cases of illegal interference with this process, the Mission has observed that some groups of returnees wish to participate in elections, either by organizing citizens' committees or by supporting specific candidates. In view of this development, special care will have to be taken to ensure that such civic participation takes place freely and without interference.

Case 1

152. The illegal interference with the return of refugees to San Antonio Tzejá, Ixcán, Quiché (para. 143 of the second report), culminated on 28 June 1995 when the group of returnees, who had stayed in the Church of Cantabal for over two months, decided to go to San Antonio Tzejá. Half a kilometre from that point, they were violently intercepted by a group of military commissioners, CVDC members and other persons, led by a civilian for whom an arrest warrant had been issued on 25 May 1995 and who stands accused of various offences. These people not only interfered with the returnees' freedom of movement, but also displayed weapons and made death threats against the returnees and against inhabitants of the town who were willing to accommodate them, and even detained five international officials, in front of 70 police officers who were unable to stop them or to capture the chief perpetrator (para. 24).

153. On 30 June, a government commission visited the site and succeeded, weeks later, in persuading the returnees to move to a location two hours away from San Antonio Tzejá. Despite these positive developments, the investigation revealed that those responsible are still at large, cases of intimidation continue and the State is not living up to its duty to protect the rights of the returnees.

IV. INSTITUTION-BUILDING, INTERNATIONAL TECHNICAL AND FINANCIAL COOPERATION AND HUMAN RIGHTS PROMOTION AND EDUCATION

A. Institution-building

154. The parties to the Comprehensive Agreement recognized the need to enlist the Mission's help in strengthening national entities working for the protection of human rights. Although this process hinges primarily on decisive action by the authorities, with the cooperation of the international community, the Mission's verification activities help to determine priorities for institution-building.

155. Institution-building is essential in a context where laws are being disobeyed for a number of reasons. To correct this situation, the process must take into account the diversity of institutions and problems and must be based on reaching a consensus with the local counterparts to ensure that projects are implemented.

156. Cooperation in strengthening the judiciary is based on the premise that each of the individual judges, who have a monopoly on the administration of justice, must constitute the last and best defence of respect for human rights, and must enjoy an autonomy and independence limited only by law. The verification process has revealed that factors both within and outside the judiciary affect the observance of this principle, as well as access to the courts and the pleading of defendants' cases in legal proceedings. The judiciary must improve the organization of judicial offices, the legal information system and procedures for assigning cases and process-serving.

157. On 4 August 1995, a framework agreement on technical cooperation was concluded between MINUGUA and the judiciary. It provides for assistance to the Public Defender's Office, the consideration and implementation of a plan for improving the juridical information system and measures to strengthen the Judicial Training School.

158. The verification process showed that the Public Prosecutor's Office has neither the capacity nor the institutional will to investigate crimes, particularly in unusually important cases. It also revealed that most prosecutors are unfamiliar with basic concepts for planning criminal investigation strategies and organizing work, and that they do not work closely enough with the National Police.

159. The technical cooperation agreement between the Public Prosecutor's Office and the MINUGUA/UNDP Joint Unit provided for the establishment of a Technical Advisory Unit within that Office, whose purpose is to train prosecutors. The Unit provides guidance and training in organizing investigations, planning strategies for public and oral proceedings and managing cases. In addition, a handbook for prosecutors and various forms to facilitate their work are being prepared. Seven of the eight courses scheduled have already been given, and the training programme is to be expanded to cover assistant prosecutors. The agreement is to be extended and broadened to include assistance to the Board of the Public Prosecutor's Office and to the Attorney General in drawing up regulations, inter alia, for the staff of the Public Prosecutor's Office.

160. It has been noted that the Public Defender's Office, which still is not operational in all parts of Guatemala, suffers from a serious shortage of funds and human resources. Under the institution-building project for this Office, agreed upon with the Supreme Court of Justice on 4 August 1995, defence lawyers will be trained in the use of the Code of Criminal Procedure and a plan will be devised for expanding the public defence system.

161. Support for the Office of the Counsel for Human Rights in investigating human rights violations will focus on meeting that Office's need for an autonomous mechanism for investigating reports and verifying that CVDC members are not coerced into joining those groups. The MINUGUA/UNDP Joint Unit will

soon conclude a framework agreement with that Office on strengthening the Department of Investigations and the Department of Indigenous Affairs.

162. The verification process revealed the extreme institutional weakness of the National Police and the need for radical reform. The Mission's cooperation in strengthening this institution will focus on supporting the reform efforts made by the Government in compliance with its commitment to continue to purify and professionalize the security forces. The project agreed upon with the Ministry of the Interior and the Director of the National Police, which is being implemented with support from the Venezuelan Government and UNDP, will serve to strengthen the areas of investigation and coordination with the Public Prosecutor's Office.

163. The Mission's investigations also indicated that problems with access to the courts and to defence counsel, as well as the lack of court interpreters, are most likely to affect the indigenous population. As part of its cooperation in institution-building, MINUGUA will soon launch a number of local-impact programmes to lay the foundations for solving these problems at the national level.

B. Technical and financial cooperation

164. Support from the international community took the form of financial cooperation, which contributed a total of US$ 1.7 million to the Trust Fund, thanks to generous donations of US$ 200,000 from the Government of Denmark, US$ 500,000 from the United States of America and US$ 1 million from Norway.

165. The cooperation agreement with Norway, signed on 26 June 1995, confirmed the offer to donate US$ 1 million through the Norwegian Agency for Development Cooperation. This contribution is being used to continue institution-building efforts in the Public Prosecutor's Office (para. 159) and to begin such efforts in the Public Defender's Office. These resources also made it possible to establish a fund for national and international consultants and to organize a number of events on topical issues and on human rights promotion and education. Half of the resources are used to support the dissemination of information on the Agreement on Identity and Rights of Indigenous Peoples.

166. The donation from the United States Government, which was confirmed on 4 August 1995, is being used to complement institution-building activities in the Public Defender's Office by training public defenders and officials of the Office and drawing up an agenda for its expansion. These resources are also used to provide technical assistance to the Supreme Court of Justice for its technological modernization programme and to support the Judicial Training School (paras. 157 and 160).

167. An additional contribution of US$ 500,000 from the United States of America is being negotiated for institution-building activities related to the Agreement on Identity and Rights of Indigenous Peoples. Offers of support from the Netherlands (US$ 260,000) and Sweden (US$ 1 million) will be confirmed shortly.

168. In cooperation with UNDP, support for the Office of the Counsel for Human Rights in the area of indigenous peoples' rights was negotiated with Denmark's Human Rights Programme for Central America (PRODECA). UNDP has launched a technical assistance project into which the PRODECA contribution will be incorporated under a cost-sharing scheme, with joint technical assistance and supervision. In addition, the MINUGUA/UNDP Joint Unit, with the support of the Government of Venezuela, has provided two police experts on criminal investigation and coordination between the Public Prosecutor's Office and the National Police (para. 162).

169. A letter of intent was signed with the Inter-American Institute of Human Rights to emphasize common areas of work in institution-building, human rights promotion and education, the rights of indigenous peoples and the comparative study of human rights and humanitarian law.

C. Human rights education

170. During the period under review, 66 human rights training seminars and nearly 250 informal talks on the various agreements and the Mission were organized. These activities, which attracted over 18,000 participants, were made possible by the European Union's Institution-Building Project for the National Commission for Refugees, Returnees and Displaced Persons. Arrangements for this project, which will be implemented for four months at a cost of US$ 45,000, were finalized on 3 May 1995 through a joint cooperation agreement.

171. The education and training activities are aimed at both State authorities (prosecutors, judges, police officers) and human rights advocates from non-governmental organizations. The promotional and informational talks on human rights are targeted at the general public, including representatives of various organizational structures.

172. Training activities have come up against serious obstacles, such as illiteracy, especially among women; ignorance of the basic concepts of the rule of law, democracy, justice and even human rights and the bargaining process; linguistic and cultural differences, which make it hard to communicate with the population; the lack of translation services; political polarization; and the unrealistic expectations that have accompanied people's acceptance of MINUGUA. At a subsequent stage, it will be necessary to prepare projects to strengthen entities that provide human rights education and training.

V. AGREEMENT ON IDENTITY AND RIGHTS OF INDIGENOUS PEOPLES

173. The Agreement on Identity and Rights of Indigenous Peoples expanded the Mission's mandate and functions by requesting MINUGUA to verify the situation with respect to the human rights recognized under Guatemalan law and in international instruments on the subject, which have immediate force and application. It also requested international cooperation for disseminating the Agreement and complementing national efforts to fulfil the Government's commitments. In that connection, the Mission has intensified its activities in the areas of public information, verification and institution-building.

174. The wide dissemination of the Agreement, particularly in indigenous communities, is a prerequisite for its implementation. Accordingly, the Mission has carried out and supported various public information activities, beginning with the publication of 5,000 copies of the Agreement.

175. Together with the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the Academy of Mayan Languages, MINUGUA has supported national efforts to translate the Agreement into nine Mayan languages; the Ministry of Education and the Universidad Rafael Landívar are also involved in this project. As a first step, the Mission is financing workshops in which translators from different linguistic communities seek to harmonize the terms used in the various languages. The Peace Commission (COPAZ) has participated actively in this effort.

176. The Mission's regional offices have organized workshops and seminars to promote the dissemination of the Agreement, to be followed by a more intensive information campaign in the coming months.

177. In consultation with the parties and indigenous organizations, the Mission prepared a handbook of instructions for verifying compliance with the Agreement, which establishes the general framework and procedures for verification. This handbook reflects the unique nature of the commitments made in the Agreement, which focus on the constitutional, legal and administrative reforms considered necessary for the elimination of discrimination, both de facto and de jure, and for the effective exercise of the specific rights of indigenous peoples. In this connection, the Agreement stipulates that "all matters of direct interest to the indigenous peoples need to be dealt with by and with them", and provides for the establishment of joint commissions composed of an equal number of representatives of the Government and representatives of indigenous organizations for the preparation of the most important reforms, as well as other forums for participation and consultation.

178. Although the vast majority of the commitments in the Agreement concern human rights, only those rights which are already recognized under Guatemalan law and which do not require the institution of reforms in order to be effectively enjoyed can be considered to be in force and verifiable by the Mission. Thus, pending the conclusion of an agreement on a firm and lasting peace, the verification process will focus primarily on equal treatment and non-discrimination with respect to indigenous peoples. However, the Mission believes that the Government should speedily initiate the consultation process or adopt the measures needed to ensure the effective exercise of these rights.

179. The process of investigating individual cases takes into account the rights of indigenous peoples as set forth in the Guatemalan Constitution and in international human rights instruments to which Guatemala is a party, particularly the International Convention on the Elimination of All Forms of Racial Discrimination, and therefore emphasizes discrimination with respect to cultural, civil and political rights. By observing situations, MINUGUA will verify compliance with other aspects of the Agreement, in cooperation with the organizations, entities and traditional authorities of indigenous peoples.

180. In promoting and protecting the human rights of indigenous peoples, special attention must be paid to institution-building efforts in State and indigenous organizations. The Mission's priorities in this area are based on the Agreement itself: establishing and strengthening mechanisms and organizations that defend the rights of indigenous peoples and guarantee due process, and strengthening indigenous institutions and their traditional norms.

181. The Mission's strategy is intended to fulfil both of these commitments. For the short term, emphasis has been placed on programmes to strengthen entities that protect and defend indigenous rights, to facilitate access to the justice system and to fight discrimination. Through the MINUGUA/UNDP Joint Unit, the Mission has designed a project to support and strengthen the Department of Indigenous Affairs of the Office of the Counsel for Human Rights.

182. Other projects in Quetzaltenango and the Ixil region of Quiché concern popular law offices and bilingual interpretation. The aim of the pilot project in Quetzaltenango is to design and later implement a model for the management of translation and training services for judges and prosecutors.

VI. CONCLUSIONS AND RECOMMENDATIONS

183. The Mission concludes that during the period covered by this report, although certain positive steps and attitudes already indicated in the second report have been maintained, the general human rights situation in Guatemala is still a cause for concern and has in some ways taken a turn for the worse.

184. The serious lack of public security is in itself an encroachment on human rights because it denies the people the possibility of living free of fear and of attacks on their lives, integrity of person and liberty.

185. Impunity, as well, undermines basic elements of the rule of law, such as the principle of legality, which postulates that all are subject to the law, or the principle of responsibility, according to which there must always be someone in authority who takes responsibility for all illegal action by government officials.

186. The Mission believes that the hopes aroused by the progress noted in the second report were not sustained by further advances. During this reporting period, it verified a deterioration in some aspects of the human rights situation, owing to a crisis in the administration of justice system. This judgement is based on its confirmation of brutal murders, instances of extreme abuse of authority, threats made against prosecutors and failures to carry out arrest warrants, not to speak of the more difficult conditions under which persons and organizations working to safeguard and promote human rights are operating. The crisis in the judicial system and the violations of due process have reached a critical point, and most of the alleged human rights violations have taken place in a climate of intimidation, which directly affects the ability of government institutions to deal with the perpetrators.

187. The Mission, on the basis of its own verification, concludes that the right to life is still the most seriously affected, and that it is so precarious

because the State has shirked its obligation to provide guarantees and its institutions do not exercise their solemn duty to prevent, investigate, prosecute and punish crimes.

188. The Mission further concludes that the Government has not adequately guaranteed the rights to integrity and security of person and to individual liberty. It has ascertained serious instances of torture and arbitrary or illegal detention that had not been investigated. The recurrence of acts of this sort and their countenancing by the authorities also favour impunity.

189. The verification process has allowed the Mission to conclude that persons working to promote and safeguard human rights continue to be abused and intimidated, and that the assassination of Pastor Manuel Saquic and the subsequent threats have made it much harder for human rights activists and organizations to do their work. This unfortunate development is an example of the pernicious impact of the kind of discourse that equates human rights activism with subversion.

190. Verification by the Mission has shown that the power of criminal organizations and of individuals - with or without links to the Government - who commit crimes to settle police or private scores is greater than the power of the institutions responsible for combating them. This equation will be reversed only when criminal agents and groups are no longer encouraged in their actions by the growing climate of impunity and the sure knowledge that these institutions are weak, in other words, when the institutions act decisively and take whatever steps they can and must take.

191. Given the repeated and confirmed occurrence of criminal activity by illegal groups and clandestine machinery, to which government officials are frequently linked, the Mission is compelled to recommend once again that the Government should identify, disband and punish such groups, investigating their possible links with State officials or institutions and placing the responsibility where it belongs. The Mission also believes that investigation of these groups should focus specifically on some of the particularly sensitive areas already indicated, like drug trafficking, car theft and the smuggling of wood. The failure to comply with this recommendation benefits the criminal groups and diminishes the credibility of State institutions and the public's confidence in them.

192. The Mission noted that the right to due process was being violated more frequently, particularly when it came to the State's legal obligation to investigate and punish, as could be seen in the almost total failure by the competent institutions to bring court action and the virtual miscarriage of justice in response to serious human rights violations.

193. The State bodies that administer justice are responsible for this situation, especially the Public Prosecutor's Office, which has proven to be strikingly incapable of initiating criminal proceedings and devoid of any policy for applying legal controls. The endemic crippling of investigations is aggravated by the absence of a clear determination on the part of institutions to investigate and prosecute crimes involving persons belonging to or related to the army, or officials of the security forces.

194. The Mission finds it troubling that the members of the armed forces implicated in illicit activities are in a particularly good position to take advantage of impunity, owing to the particular role which, for historical reasons, the military has played in Guatemala. It is also a matter of concern that due process is disregarded primarily in high-profile cases, in which members of the army or persons linked to it are implicated, given the interference of military interests in the operations of the judiciary.

195. The Mission, believing that the participation of members of the army in trials for crimes which are not specifically military has proven to interfere with the State's duty to investigate and punish, reiterates its recommendations relating to a reform of the current administration of justice system as concerns military matters.

196. The activities of illegal groups or isolated acts by individual government officials are not the only explanation for the human rights situation, nor are structural shortcomings the only determining factor. Rather, the situation is fostered and reinforced by deliberate acts and omissions on the part of government officials, for which the authorities must take responsibility.

197. The persistence of impunity is the fault of the Government, not only because its officials take wrongful advantage of it but because, legally and politically, its highest authorities have the prime responsibility for ensuring respect for the human rights of all the inhabitants of Guatemala.

198. Similarly, the present lack of coordination between the Public Prosecutor's Office, the judiciary and the National Police cannot be attributed solely to structural shortcomings. The deliberate acts or omissions of government officials, for which the authorities are responsible, also come into it.

199. For all these reasons, impunity should be dealt with by the separate branches of government acting together under strong leadership by the Executive branch, which is primarily responsible for ensuring respect for human rights and the safety of the people.

200. While it appreciates the efforts of the highest officials of the National Police to overcome the institutional flaws that prevent it from playing the role it should to combat impunity and guarantee public safety, the Mission feels that these efforts do not suffice. It therefore reiterates that if the structural and professional weaknesses of the National Police are to be corrected its institutional bases and the process used to select and train its officers must be radically reformed.

201. In any case, the Mission welcomes the fact that the positive points brought out in its previous report still hold true, and it believes that the President's announcement of the gradual demobilization of military commissioners until all have been eliminated is a very encouraging step, in view of the fact that, if fully implemented, this step may help wipe out one component of impunity. The Mission will be closely watching the impact on human rights.

202. However, this comparative progress is inadequate without the decisive adoption of a comprehensive policy to combat impunity. The inadequacy is

institutional, a result of the weakness of government institutions in enforcing respect for the law and of the lack of any political will to make headway in actually changing the situation. To repeat what was said in the previous report, it is not enough for the Government to refrain from encouraging violations and their commission with impunity. It has to adopt and apply strong measures based on an overall policy to combat impunity.

203. The Mission thinks that it would be very difficult to make meaningful progress without giving serious attention to the recommendations made in its two earlier reports. The Mission cannot use as its criterion for assessing progress simply the fact that formalities, such as reminders to concerned institutions, have been completed; rather, it must take into account substantive actions and their real impact in fostering change. It is therefore deeply concerned that there is no record of any Government follow-up to its recommendations, especially those having to do with the crucial matter of impunity. The one exception was the establishment of an inter-ministerial liaison commission within COPREDEH, but the Mission has no information on the impact it has had.

204. Given the disregard for most of the recommendations contained in previous reports, the Mission reiterates all its recommendations to the Government, particularly the recommendation to design a comprehensive policy to combat impunity; and it also reiterates its appeals to the Supreme Court of Justice and the highest authority of the Public Prosecutor's Office (paras. 201 ff. of the second report).

205. The Mission is firmly convinced that the Government, which benefited from most of the commitments of the Comprehensive Agreement, can, in the time remaining in the President's term of office, adopt crucial measures along the lines indicated; and it should be a matter of serious interest for all the political parties to continue along that path. The best guarantee of that continuity is the country's keen awareness of the magnitude of the problem of impunity and the need to fight it, an awareness already apparent in the signing of the Comprehensive Agreement and one that has only increased, as can be seen in the public statements of various ecclesiastical and civil authorities.

206. Furthermore, the occurrences verified during this period warrant the conclusion that URNG is still not living up to its commitments under the Comprehensive Agreement, particularly the commitment to stop inflicting suffering on the civilian population, in that it is causing harm or unnecessarily endangering persons and civilian property for military or propaganda purposes, and the commitment to respect the rights of the wounded, in that it is preventing them from receiving needed assistance. It has also been verified that URNG troops continue violating human rights by collecting a "war tax", and by threats and reprisals against persons and civilian property. The failure of URNG to heed and respond to most of the recommendations made in earlier reports is of serious concern to the Mission, because allowing the guilty to go unpunished creates a situation analogous to impunity, for which the URNG Command is politically responsible.

207. The Mission believes that the Guatemalans themselves are primarily responsible for overcoming the difficulties standing in the way of the observance of human rights. To that end, MINUGUA, the Group of Friends of the

Guatemalan peace process and the international community stand ready to cooperate, provided that the Government and URNG give evidence of firm determination, without which outside cooperation loses its effectiveness.

Final acknowledgement

209. Lastly, the Mission again thanks the members of the international community and the ambassadors of the Group of Friends for the willingness they have shown to support peace, through MINUGUA. It appreciates the cooperation received from the parties in discharging its functions and again expresses its thanks to the people of Guatemala for the confidence they continue to show in the Mission as it fulfils the task set for it by the parties when they requested its establishment.

Notes

1/ A case is closed when sufficient information has been obtained to establish whether or not a violation has occurred or when, upon verification, it has been established that the complaint is based on inaccurate allegations or falls outside of the mandate of the Mission. It may also be closed if, after a reasonable period of time, it proves impossible to confirm it owing to lack of information. In this event the case may be reopened if new information is obtained.

COMPLAINTS ADMITTED, BY CATEGORY OF ALLEGED VIOLATIONS a/

Right to life		
Extrajudicial executions or deaths in violation of legal guarantees		49
Attempted extrajudicial executions		18
Death threats		89
	Total	156
Right to integrity and security of person		
Torture		6
Cruel, inhuman or degrading treatment		3
Ill-treatment		13
Excessive use of force		3
Other threats		62
	Total	87
Right to individual liberty		
Arbitrary or illegal detention		24
Detention in violation of legal guarantees		6
Kidnapping		3
Hostage-taking		0
Enforced disappearances		3
Forcible, unjust or discriminatory recruitment		7
	Total	43
Right to due process		
Procedural guarantees		9
Right of habeas corpus		6
Right of access to the justice system		45
	Total	60

Political rights		7
	Total	7
Right to freedom of expression		3
	Total	3
Right to freedom of movement		12
	Total	12
Right to freedom of association		12
	Total	12
Other violations in the internal armed conflict		
Harm or suffering inflicted on civilians		31
Attacks on civilian property		7
Attacks on property essential to the survival of the civilian population		0
Acts of terrorism		0
Failure to protect health workers and religious workers		0
Participation of children under 15 in the internal armed conflict		2
	Total	40
	Grand total	424

a/ The number of complaints in each category may change during the verification process.

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HUMAN RIGHTS QUESTIONS

Letter dated 22 September 1995 from the Permanent Representative of Estonia to the United Nations addressed to the Secretary-General

I have the honour to bring to your attention the text of a statement issued by the Foreign Ministry of Estonia regarding Estonian legislation (see annex).

I should be grateful if you would have the present letter and the attached statement circulated as an official document of the General Assembly under agenda item 112.

(Signed) Trivimi VELLISTE
Ambassador
Permanent Representative

95-29258 (E) 161095 181095

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ANNEX

Statement issued on 21 September 1995 by the Ministry of Foreign Affairs of Estonia

On 30 June 1995, a memorandum on the human rights situation in Estonia previously circulated by the Russian delegation at a meeting of the Permanent Council of the Organization for Security and Cooperation in Europe (OSCE) at Vienna on 13 June 1995 was published as an official document of the United Nations (A/50/267, annex).

That memorandum, dealing with certain aspects of Estonian legislation and in particular with the situation of the "Russian-speaking population" contains allegations that misrepresent the situation in Estonia.

In this regard, the Estonian Ministry of Foreign Affairs would like to provide an overview of the issues touched upon in the aforementioned memorandum.

1. The withdrawal of Russian troops from Estonian territory cannot be linked with any other issue, including that of what is termed "human rights", as the former Soviet - now Russian - troops that stayed in Estonia were a remnant of the Soviet annexation of the independent Republic of Estonia in 1940 that ended only in 1991 and did not have any legal status. According to the principles of international law and to the general concept of good-neighbourly relations, a State cannot keep its troops in the territory of another sovereign State without the latter's consent.

2. The question of "human rights", more precisely the question of the "Russian-speaking population", has repeatedly been raised by the Russian Federation. Before the Second World War, the situation was similar to that when a certain State tried to subjugate other States, using the issue of co-ethnics as a political tool. It is important to note that not one fact-finding mission of the 20 odd that have visited have reported violations of human rights in Estonia. Since 1993 Estonia has been a State member of the Council of Europe, Europe's oldest international organization, which monitors the human rights situation closely and to which the Russian Federation has not yet qualified to belong. The reports of the OSCE mission in Estonia do not contain information about human rights violations in Estonia. A recent report by the Council of Europe Parliamentary Assembly Human Rights Committee has found the situation of human rights in Estonia satisfactory. Independent sociological research carried out both in Estonia and in the Russian Federation, as well as polls conducted in Estonia, show no evidence of discrimination of Russophones versus other linguistic groups (Swedish-speaking, Ukrainian-speaking and other communities). Furthermore, Russians are one of the four officially recognized national minorities in Estonia. In connection with the imminent ratification by Estonia of the European Convention of Human Rights, all Estonian laws and practices relating to their application are being examined once again together with the experts of the Council of Europe.

3. The new Estonian Law on Citizenship, which entered into force on 1 April 1995, conforms fully, not only outwardly as stated in the memorandum by

the Russian delegation, to internationally recognized requirements. The Law, based to a large extent on the principles of the 1938 Law on Citizenship that re-entered into force in 1992, requires an applicant for citizenship to have resided in Estonia five years prior to submitting an application. In the specific Estonian context to which the Russian delegation refers, this new requirement does not affect people who were already residing in Estonia in 1990 (when the period of transition to the restoration of independence was declared) and continue to do so. Thus it does not introduce any restrictions for acquiring citizenship. Based on careful comparison with the citizenship laws of other countries, it is clear that the Estonian Law on Citizenship is in full conformity with internationally recognized norms and standards.

4. The new Law on Language, also enacted on 1 April 1995, does not provide any possibilities of discrimination on a linguistic or ethnic basis. The Estonian State continues to provide education in the Russian language. One third of all first-grade students who began their studies this year did so in Russian, a number that corresponds fully to the ethnic composition of the population of Estonia. In general the Estonian authorities do not provide other national minorities with public education in their own languages. The Russian speakers in Estonia have the right to form their own cultural and educational institutions, religious and ethnic organizations, practise their own cultural traditions, publish their own language publications and so on. Two national daily newspapers and several public and commercial television and radio programmes diffuse information in Russian. The Language Law contains special provisions with regard to areas that have a high proportion of Russian speakers where Russian can be used as the internal language of communication by the local authorities and where the population enjoys the right to receive official communications in the minority language.

5. As an example of "anxiety" and "constant fear of being deported from Estonia" as the Russian Federation memorandum states, the Russian delegation mentions the case of Mr. P. Rozhok, an ultranationalist and anti-Semitic representative of Vladimir Zhirinovsky's Russian Liberal Democratic Party. Indeed, Mr. Poznok is a Russian citizen but, contrary to the allegations of the Russian delegation, Mr. Rozhok's citizenship was not the cause for his expulsion from Estonia. This decision was taken because Mr. Rozhok worked actively against Estonia's constitutional order and incited ethnic hatred. Expulsion for these reasons is a completely normal procedure that occurs when citizens of other countries do not respect the laws of the country in which they reside. Mr. Rozhok not only made statements which implied that he supported the reoccupation of Estonia, but he also established organizational structures to achieve that aim. Many of his activities were not legal even according to Russian Federation laws. Estonia is particularly concerned with Mr. Rozhok's anti-Jewish statements and calls on the Russian Federation to work together with it to combat anti-Semitism and other forms of inter-ethnic hatred. Mr. Rozhok did have and did exercise the right to appeal against the actions of the authorities after his expulsion. Relevant legal procedures have been initiated.

6. As a sign of good will Estonia has once more extended the deadline for submission of applications for the granting of residence permits to aliens.

7. In Estonia there is no State church. The church and the State are separate. Controversial issues concerning the Orthodox Church, both canonical (the location of the ecclesiastical centre for Orthodox parishioners) and legal (the restoration of church property under Estonian law), are remnants of numerous problems caused by the forcible annexation of independent Estonia to the Soviet Union in 1940 and have been brought to the fore by the collapse of the latter. The Estonian Orthodox Church, which in 1919 had placed itself under the jurisdiction of the Patriarch of Constantinople, reregistered itself in this status with the support of 21 parishes in 1992. Certain other parishes wish to have their ecclesiastical centre in Moscow. This apparent case of schism can and must be solved within the Church.

8. The Government of Estonia has begun granting residence permits to Russian military pensioners who have expressed their desire to remain in Estonia. Some 13,700 applications have been submitted and are being processed. OSCE has appointed its representative to the relevant commission that deals with issuing residence permits to retired staff officers of a foreign State.

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IMPROVING THE FINANCIAL SITUATION OF THE UNITED NATIONS

Note verbale dated 26 September 1995 from the Permanent Representative of Denmark to the United Nations addressed to the Secretary-General

The Permanent Representative of Denmark to the United Nations presents his compliments to the Secretary-General of the United Nations and has the honour to transmit to him the statement by the Ministers for Foreign Affairs of the Nordic countries at their meeting in New York on 25 September 1995 on the financial situation of the United Nations.

It would be appreciated if the Secretary-General would bring the enclosed statement to the attention of the delegations attending the fiftieth session of the General Assembly and distribute the text as an official document of the Assembly, under agenda item 117.

95-29176 (E) 290995 031095

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ANNEX

Statement by the Ministers for Foreign Affairs of the Nordic countries at their meeting in New York on 25 September 1995 on the financial situation of the United Nations

The Governments of the Nordic countries - Denmark, Finland, Iceland, Norway and Sweden - are deeply concerned about the financial situation of the United Nations. The present financial crisis seriously threatens multilateralism and the ability of the world Organization to respond to urgent demands to prevent and contain conflicts, to promote development and to alleviate suffering. A sound financial basis is necessary to ensure the success of the ongoing efforts to reform and rationalize the work of the Organization. It is unacceptable, and particularly deplorable at the fiftieth anniversary of the United Nations, that the central instrument for international cooperation on vital global issues is practically bankrupt, owing to the failure of Member States to pay their assessed contributions in full, on time and without conditions.

Unilateral withholding of assessed United Nations contributions is a clear violation of the obligations of Member States. On behalf of their Governments, the Ministers for Foreign Affairs of the Nordic countries call on all Member States to fulfil their financial obligations towards the United Nations by immediately paying all outstanding contributions.

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RIGHT OF PEOPLES TO SELF-DETERMINATION

Report of the Secretary-General

1. In its resolution 49/148 of 23 December 1994, the General Assembly, inter alia, requested the Commission on Human Rights to continue to give special attention to the violation of human rights, especially the right to self-determination, resulting from foreign military intervention, aggression or occupation, and requested the Secretary-General to report on this question to the General Assembly at its fiftieth session under the item entitled "Right of peoples to self-determination".

2. The present report contains a summary of action taken by the Commission on Human Rights at its fifty-first session on this question.

3. At its fifty-first session, held from 30 January to 10 March 1995, the Commission on Human Rights considered the item entitled "The right of peoples to self-determination and its application to peoples under colonial or alien domination or foreign occupation" at its 4th to 7th and 29th meetings. The debates are reported in the relevant summary records (E/CN.4/1995/SR.4-7 and 29). The report on the fifty-first session of the Commission on Human Rights is contained in document E/1995/23-E/CN.4/1995/176 and Corr.1 and 2.

4. Under this agenda item, the Commission adopted four resolutions, which related to the situation in occupied Palestine (1995/4), the use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination (1995/5), the Middle East peace process (1995/6) and the question of Western Sahara (1995/7).

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SUSTAINABLE DEVELOPMENT AND INTERNATIONAL ECONOMIC COOPERATION: TRADE AND DEVELOPMENT

Negotiations on an international code of conduct on the transfer of technology

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Secretary-General of the United Nations Conference on Trade and Development, which was prepared in pursuance of paragraph 2 of Assembly resolution 48/167 of 21 December 1993.

95-30486 (E) 251095 301095

ANNEX

Report of the Secretary-General of the United Nations Conference on Trade and Development on negotiations on an international code of conduct on the transfer of technology

I. INTRODUCTION

1. The background to the negotiations on an international code of conduct on the transfer of technology, as well as the consultations carried out by the Secretary-General of the United Nations Conference on Trade and Development (UNCTAD) since the eighth session of the Conference in 1992, were covered in the previous report of the Secretary-General of UNCTAD to the General Assembly (A/48/533, annex). Suffice it to recall that in the Cartagena Commitment, adopted at its eighth session, the Conference, having reviewed the work carried out in the negotiations on an international code of conduct and the lack of agreement in the recent consultations on the subject, recognized that the conditions did not exist to reach full agreement on all outstanding issues, and decided that, should Governments indicate, either directly or through the Secretary-General of UNCTAD, that there was the convergence of views necessary to reach agreement on all outstanding issues, then the Trade and Development Board should re-engage and continue its work aimed at facilitating agreement on the code. 1/

2. The General Assembly, in its resolution 48/167 of 21 December 1993, reiterated that the conditions did not currently exist to reach full agreement on all outstanding issues in the draft international code of conduct on the transfer of technology and invited the Secretary-General of UNCTAD, based on the relevant provisions of the Cartagena Commitment and taking into account the findings of the Ad Hoc Working Group on the Interrelationship between Investment and Technology Transfer, to report to the Assembly at its fiftieth session on the state of the discussion. The present report, prepared in accordance with that resolution, reviews recent developments of relevance to the state of the discussion on the draft code of conduct and considers options regarding the future course of action in this area.

II. RECENT DEVELOPMENTS OF RELEVANCE TO THE STATE OF DISCUSSION ON THE DRAFT CODE OF CONDUCT

A. Ad Hoc Working Group on the Interrelationship between Investment and Technology Transfer

3. Pursuant to the Cartagena Commitment, the Trade and Development Board established the Ad Hoc Working Group on the Interrelationship between Investment and Technology Transfer. 2/ The Group identified three main issues for examination and discussion, namely, investment flows, transfer of technology and competitiveness; technological capability-building in developing countries, particularly the least developed countries, and in countries undergoing the transition to a market economy; and transfer and development of environmentally

sound technologies. In examining these issues, the Working Group referred to different, though interrelated, questions which included the role of the State; policies to promote technology and investment flows and technological innovation; human resources development and institution-building; mechanisms of technology transfer; intellectual property protection; factors affecting competitiveness; and the role of enterprises.

4. Within its work programme, the Working Group considered a report by the UNCTAD secretariat containing an overview of laws and regulations dealing with the transfer and development of technology, 3/ which highlights the fact that technology advances and their rapid diffusion, especially in the area of information, have contributed to the creation of new markets and the transformation of innovation and production processes.

5. These changes and the attendant shift towards global competition require a continual search for alternative strategies by enterprises and for improved policy instruments by Governments that would enable them to respond more effectively to the new world environment. Consequently, considerable attention has been given in recent years to the creation of a legal environment conducive to technology transfer and development. This has led a number of Governments to formulate laws and regulations relating to the transfer, development, adaptation and diffusion of technology. Most developed countries have introduced changes in their competition laws and enforcement policies on restrictive practices in order to stimulate technological innovation, and have passed laws to protect new technologies. The main focus in developing countries has been on the formulation of policies and legislative instruments for the promotion and encouragement of foreign investments and related technology transfer. Many developing countries have liberalized their investment regime and technology transfer legislation in order to attract more foreign investment. The main approach taken by those countries towards technology transfer has been to focus on effective collaboration between partners involved in transfer arrangements rather than on the control of the contractual aspects of transactions. More recently, a number of developing countries have also modified their intellectual property legislation to strengthen protection of intellectual property rights or to introduce new enforcement measures.

6. In discussing those issues and analysing relevant empirical evidence, the Working Group, without putting forward any prescriptive solutions, offered for consideration a series of findings and conclusions. 4/

7. One of the main findings of the Working Group was that the world situation was very different from that which had existed two or three decades before, when an inward-oriented and State-led industrialization strategy had been the dominant approach adopted by many countries. Increasing liberalization trends, adoption and implementation of structural adjustment programmes, changes in the international division of labour and greater cooperative arrangements among enterprises have, in a period of rapid technological change, created a new setting for investment and technology flows.

8. Recognizing that technology was vital for achieving economic development and sustaining competitiveness, the Working Group found that the process of gaining technological capability was not instantaneous, costless or automatic,

even if the technology was well diffused elsewhere. Apart from physical inputs, it would call for various new skills, technical information and services, contract research facilities, and interactions with other firms, equipment suppliers, standards bodies and so on. The setting up of this dense network of cooperation would require the development of special skills and a favourable economic, institutional and legal environment. The Group stated that all countries, particularly developing countries, could benefit from imported technologies to establish and strengthen local technological capability, including, inter alia, the ability to acquire, absorb and adapt new and emerging technology, and to improve their international competitiveness. Such technologies would be obtained largely through foreign direct investment, including joint ventures and capital goods imports. However, in recent years, other channels of transferring technology, such as licensing, management contracts, subcontracting and franchising, have also grown in importance, including those within the framework of strategic technological partnerships.

9. The Working Group also concluded that foreign direct investment was attracted most strongly to those countries that had adopted measures to strengthen their domestic technological capability and created an overall policy framework conducive to innovation, investment in infrastructure, intellectual property protection, human capital formation and a stable macroeconomic and regulatory environment. It was emphasized that government efforts had not necessarily elicited the desired effects in terms of additional investment and technology flows by firms. In most developing countries, the process of technological capability-building might be hampered by, inter alia, declining rates of investment, misallocation of resources, external imbalances, lack of diverse and sophisticated skills, weak linkages between domestic research and development institutes and enterprises as well as unfavourable external factors. In that context, the problems faced by developing countries, particularly the least developed countries, and countries in transition would require special consideration, particularly with respect to their need to formulate appropriate strategies on foreign direct investment and transfer of technology.

10. In the light of those findings, the Working Group, in its general conclusions, confirmed that efforts towards promoting technology transfer and technological capability-building in developing countries and countries in transition need to be coupled with market-based trade and investment policy and pricing systems, and with a stable macroeconomic environment for business activity conducive to overall economic growth and employment. In order to maximize the efficient use of technology, technology transfer must take place, particularly in the case of developing countries, either as part of international commerce or included within bilateral or multilateral assistance programmes.

11. While confirming that the role of Government remained vital in the process of capability-building, the Group recognized that there was a need for closer collaboration between business, academia and Government, so as to take into account the motivations and needs of the production sector in the formulation of policies. However, differences in levels of economic and technological development may call for different sets of policy mix and approaches towards capacity-building

12. In its conclusions, the Working Group also asserted that in the post-Uruguay Round period, protection of intellectual property rights was deemed to constitute an important component of an environment conducive to international transfer of technology, including foreign direct investment. It stated that further studies and technical assistance, in collaboration with the World Trade Organization and the World Intellectual Property Organization, might be needed to elucidate the relationship between intellectual property rights and transfer of technology, particularly for the implementation of the Agreement and Trade-Related Aspects of Intellectual Property Rights, taking into account the characteristics of contemporary knowledge, inventions and ownership.

B. Agreement on Trade-Related Aspects of Intellectual Property Rights

13. The Final Act embodying the results of the Uruguay Round of multilateral trade negotiations was adopted on 15 April 1994. 5/ The Final Act includes the Agreement on Trade-Related Aspects of Intellectual Property Rights, which reaffirms basic principles of intellectual property rights protection, national treatment and most-favoured-nation treatment (arts. 3 and 4). It sets up adequate standards and principles concerning the availability, scope and use of trade-related intellectual property rights (preamble, art. 9 et seq.). Moreover, it provides for effective and appropriate means for the enforcement of trade-related intellectual property rights (preamble, art. 41 et seq.), as well as for reasonable procedures and formalities for the acquisition of maintenance of intellectual property rights (art. 62). Thus for the first time, protection of intellectual property rights in an international convention is linked to multilateral trade rights and obligations as a component of the international trading system.

14. The Agreement allows for national measures to prevent the abuse of intellectual property rights or practices which unreasonably restrain trade (art. 8, para. 2; art. 31 (k)). It also addresses licensing practices which may have adverse effects on trade or on competition and which Member States may control through appropriate measures (art. 40). In doing so, the Agreement provides, for the first time in an internationally binding instrument, a number of rules on restrictive practices in licensing contracts. It recognizes that some licensing practices pertaining to intellectual property rights which restrain competition may have adverse effects on trade and may impede the transfer and dissemination of technology (art. 40, para. 1). The Agreement does not deal in detail with those practices that have been widely discussed in the process of the elaboration of the draft code of conduct. Therefore, countries are free to specify in their legislation licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market (art. 40, para. 2). The last qualification, namely, adverse effect on competition, is tantamount to the so-called "competition test" for evaluating practices which may be deemed abusive. The provision in question provides a few examples, such as exclusive grant-back conditions, conditions preventing challenges to the validity and coercive package licensing.

15. Closely related to the above-mentioned provisions of the Agreement is chapter 4 of the draft code of conduct, in which are identified 14 practices that may be deemed restrictive, namely, grant-back provisions; challenge to validity; exclusive dealings; restrictions on research; restrictions on use of personnel; price-fixing; restrictions on adaptations; exclusive sales or representation agreements; tying arrangements; export restrictions; patent-pool or cross-licensing arrangements and other arrangements; restrictions on publicity; payments and other obligations after expiration of industrial property rights; and restrictions after expiration of arrangements. 6/

16. The main divergence of views between the negotiating groups in the discussion on the draft code of conduct was on the conceptual approach to chapter 4 dealing with the treatment of restrictive practices in transfer of technology transactions: the competition test versus the development test. The provisions in the Agreement clearly adopt the competition test, thus putting an end to a long-standing international debate as to how to treat restrictive practices in transactions pertaining to the transfer of technology, which was the main outstanding issue in chapter 4 of the draft code.

III. FINAL CONSIDERATIONS AND SUGGESTIONS

17. The findings and conclusions of the Ad Hoc Working Group on the Interrelationship between Investment and Technology Transfer and the outcome of the Uruguay Round of multilateral trade negotiations reviewed above shed light on the important evolution that has occurred in recent years in the perception of technology issues since the start of the discussions on an international code of conduct on the transfer of technology. This evolution of thinking could contribute to reaching a decision on the future course of action Governments might wish to pursue in this area.

18. It should be recalled that the negotiations on an international code of conduct on the transfer of technology were launched by the General Assembly in the 1970s. At that time, the international milieu was drastically different from that which exists today. The preamble, objectives and principles of the draft code reflect the concerns and motivations of different groups of countries in the sense that an international code of conduct should be an instrument through which to facilitate and promote the transfer of technology process, to reconcile differences in the approaches and experiences of countries concerning the transfer of technology, to give guidance and provide a framework for national legislation in the field of technology transfer and thus further the convergence of national laws, and to remedy abusive or anti-competitive practices in transfer of technology agreements. These motivations and concerns found specific expression in the structure and coverage of the draft code, the centre-piece of which was chapter 4, on restrictive practices. However, the position of the various groups of countries on the provisions dealing with transfer of technology transactions, particularly in the area of licensing practices, were influenced by existing policies and by prevailing conceptual approaches to international transfer of technology and technological development.

19. Recent years have witnessed a growing recognition of the importance of collaboration among enterprises in the transfer of technology and technological capability-building, the need to take advantage of opportunities to enter into various cooperative arrangements, the increasing emphasis in government policies on attracting foreign direct investment and promoting technology transfer, the relaxation of controls on restrictive practices, the increasing concerns about the effect of technology on the environment and the stronger accent on the creation of a stable legal framework conducive to transfer of technology which involves various economic agents in the process. Laws governing intellectual property rights are considered a key element in the strategic thinking of enterprises and Governments and an important means used by firms to safeguard their technological assets.

20. These developments, which have given rise to conceptual and policy shifts, are of unique relevance to the discussions on the draft code of conduct. This uniqueness arises, in particular, from the effect of such developments on international technology transfer which calls on the international community in the new economic environment to identify new parameters for a healthy competition that would be valid for all parties in an integrated world market. It would, therefore, be important to assess the specific implications of these developments for the international transfer of technology, particularly to developing countries, and assess their possible effects on enterprise and intergovernmental cooperation in the transfer of technology, including the identification of possible rules and principles which might enhance the stability and predictability required for such cooperation.

21. In the light of the above, it is the view of the Secretary-General of UNCTAD that the negotiations on the current draft code of conduct should be formally suspended. Alternatively, the General Assembly may wish formally to close the discussion on the code of conduct by publicly disseminating to interested groups the outcome of the work so far achieved by the United Nations Conference on an International Code of Conduct on the Transfer of Technology. It is also submitted for the consideration of Governments that a round-table meeting of eminent persons, including policy makers at the governmental and business levels as well as leading scholars in the area of transfer and development of technology, could be convened to undertake a detailed and comprehensive examination of recent developments so as to reconcile past differences and facilitate the achievement of a better understanding of the principles which should govern international cooperation in the area of technology today.

Notes

1/ See Proceedings of the United Nations Conference on Trade and Development, Eighth Session, Report and Annexes (United Nations publication, Sales No. E.93.II.D.5), part one, sect. A, para. 173.

2/ Board decision 398 (XXXVIII); see Official Records of the General Assembly, Forty-seventh Session, Supplement No. 15 (A/47/15), part one, chap. II.

3/ TD/B/WG.5/10.

4/ See the fina report of the Working Group to the Trade and Development Board (TD/B/40/(2)/17-TD/B/WG.5/12), paras. 8-29.

5/ Legal Instruments Embodying the Results of the Uruguay Road of Multilateral Trade Negotiations, done at Marrakesh on 15 April 1994 (GATT secretariat publication, Sales No. GATT/1994-7).

6/ For the draft code of conduct, see TD/CODE/TOT/47.